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Perilous Onset
The Decline of Conventional Arms Control

Higgins, David Stephen

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**PERILOUS ONSET:
THE DECLINE OF CONVENTIONAL ARMS CONTROL**

**Colonel David S. Higgins, CD, Canadian Forces (Retired)
Student Number 1212854**

Thesis submitted in conformity with the requirements for the degree of PhD

Department of War Studies

King's College London

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PERILOUS ONSET: THE DECLINE OF CONVENTIONAL ARMS CONTROL

“Arms control has to have a future, or none of us does.”

- Stanley Hoffmann

ABSTRACT

Conventional arms control and associated confidence- and security-building measures (CSBM) have had a profoundly positive effect upon contemporary European, Euro-Atlantic and Eurasian security through the massive reductions and extensive limitations they have attained in conventional military armaments, equipment, personnel and activities. These reductions and limitations have been realised through the successful implementation of multilateral regulating regimes, which has been predicated upon the conformism required to ensure their fundamental viability.

While the concept of conventional arms control has remained essentially sound, the principal regimes -- the *Treaty on Conventional Armed Forces in Europe*, the *Vienna Document on Confidence- and Security-Building Measures*, and the *Treaty on Open Skies* -- have become increasingly impeded and degraded by widespread non-fulfilment of their binding provisions. With mitigating efforts focused largely upon modalities rather than practical oversight and execution, these regimes have continued to degrade, placing international security at ever-increasing risk.

This thesis contends that, while clearly affected by inexorable geopolitical and geostrategic factors, the decline of conventional arms control regimes can be further attributed to functional breakdowns in their elemental operating constructs. This contention has been validated through a contextual examination of the concept, model and evolution of conventional arms control and CSBM, together with empirical case study analysis of the three regimes, in response to the following questions:

- Why has there been a decline in conventional arms control?
- What are the implications?
- What are the prospects of rehabilitation and revival?

The thesis concludes that efforts to restore conventional arms control must necessarily include those specifically aimed at rectifying regime model dysfunction. This begins with the re-establishment of the fundamental oversight required to surmount operative disaccord and apathy, thereby ensuring greater uniformity in fulfilling extant normative provisions. This may, in turn, provide a more viable operating basis upon which to enable recovery and improvement.

CHAPTER 1

INTRODUCTION

Over the past 20 years, the steady degradation of conventional arms control and associated confidence- and security-building measures (CSBM) has posed an increasingly serious threat to European, Eurasian and Euro-Atlantic peace, security and stability.¹ Regional conflict, territorial annexation and widespread destabilisation -- largely coincident with the post-Soviet Union security dynamic -- have directly corresponded with a significant deterioration in the standards of conduct, cooperation and interstate relations formally established under the treaties and accords that address conventional arms control and CSBM: the *Treaty on Conventional Armed Forces in Europe*,² the *Vienna Document on Confidence- and Security-Building Measures*,³ and the *Treaty on Open Skies*.⁴ This, in turn, has seriously undermined the established limits and oversight of conventional armaments and equipment, military force levels and activities originally attained under these regimes. This thesis provides an in-depth analysis of the decline of conventional arms control and CSBM that specifically relates to the operative breakdown of these regimes, the implications of this failure and the prospects of recovery.

¹ Arms control generally refers to limitations or other constraints imposed upon the quantities and types of specified weapons, equipment systems and personnel, as agreed by parties to a given regime. It differs somewhat from disarmament, which concerns the reduction, abolishment or prohibition of weapons. A key adjunct of conventional arms control, CSBM are designed to establish trust and enhance security through military transparency, thereby serving to raise the threshold of armed conflict. All relate to proliferation security, which more broadly entails the prevention, control, safeguarding or mitigation of effects associated with the development, production, possession, utilization and distribution of various munitions and related equipment systems.

² Commonly known as the Conventional Forces in Europe (CFE) Treaty.

³ Commonly known as the Vienna Document.

⁴ Commonly known as the Open Skies Treaty.

The advent and progression of arms control and disarmament have had an undoubtedly positive impact upon international peace and stability in the modern era. Although their origins date back to antiquity and their evolution has closely paralleled that of organised warfare itself, the widespread international cooperation denoted by contemporary arms control regimes is largely a 20th Century development. Indeed, between the end of the Second World War and 1982, no fewer than 20 strategic-level arms control agreements were concluded, primarily involving nuclear, chemical and biological weapon arsenals, along with development and testing.⁵ Major advancements in security cooperation continued with the introduction of increasingly diverse mechanisms and expanded jurisdictions designed to control a broadened range of armaments, warfare and associated technologies. Of these, the CFE Treaty, the Vienna Document and the Open Skies Treaty represent truly epic achievements in dramatically reducing conventional armament stockpiles, limiting force levels and constraining certain military activities. As noted by Nobuyasu Abe, former United Nations Under-Secretary General for Disarmament Affairs, much of this latter progress could be attributed to “the general improvement of international relations after the end of the Cold War.”⁶

The remarkable headway realised in conventional arms control in particular provided ample reason for optimism. As noted by international law scholar Mark W. Janis, the years immediately following the end of the Cold War were characterized by widespread support for the international legal regime, along with the increasing willingness of states to exercise greater restraint and work collectively

⁵ Mark W. Janis, *An Introduction to International Law*. Fourth Edition (New York: Aspen Publishers, 2003), 176-177.

⁶ Nobuyasu Abe, “The Future of Arms Control and Disarmament is Seriously Threatened,” *Disarmament Documentation* (2003) [Journal-on-line]; available from <http://www.acronym.org.uk/docs/0308/doc11.htm>; Internet; accessed 5 February 2011, 1.

towards a more comprehensive and dynamic framework of arms control and disarmament.⁷ The resultant “blend” of arms control, disarmament, CSBM and associated cooperative mechanisms led to unprecedented reductions in conventional weapons inventories. Under the CFE Treaty alone, nearly 70,000 specified and voluntary conventional weapon and equipment systems were reduced over the course of its implementation from 1992 to 2008.⁸ These mechanisms also significantly limited proliferation (including “black” and “grey” market arms trade and trafficking), while more effectively enabling states to collectively face common threats posed by “non-deterrable” actors.⁹

Nuclear and other weapons of mass destruction (WMD) have generally overshadowed their conventional counterparts in terms of their higher precedence within the broader proliferation security spectrum. Nevertheless, the significance of conventional arms proliferation, both vertical and horizontal, cannot be overstated, particularly with respect to the predominance of major conventional weapon systems as integral components of established offensive and defensive military strategies, including those serving as “strategic precursors” to WMD. Accordingly, conventional arms control has proven critically important -- not only in terms of its immediate effects, but also its corresponding impact upon all facets of security.

The global impact of contemporary conventional weapons is inestimable.

Although not classified as WMD, modern conventional armaments have been far more

⁷ Mark W. Janis, *An Introduction to International Law*, 176.

⁸ Arms Control Association, “The Conventional Armed Forces in Europe (CFE) Treaty and the Adapted CFE Treaty at a Glance,” *Fact Sheets and Briefs* (August 2012) [journal-on-line]; available from <http://www.armscontrol.org/factsheet/cfe>; Internet; accessed 22 August 2014, n.p.

⁹ Lynne E. Davis, “Arms Control, Export Regimes and Multilateral Cooperation,” in *Strategic Appraisal: The Changing Role of Information in Warfare*, ed. Zalmay Khalilzad and John White (Santa Monica: Rand, 1999), 361.

widely and commonly employed (i.e., by both state and non-state actors), have caused greater death and destruction, and have evolved, transmuted and proliferated at rates eclipsing those associated with any other type of weapon. While this is largely self-evident, their significance is further attested by the extraordinary technological advancements made in major conventional weapon and equipment systems, such as heavy artillery, tanks, aircraft and missiles, along with extended range, precision guided, high yield munitions and targeting systems. Corresponding military force structure and doctrinal changes have paralleled these advancements, resulting in innovations such as network centric warfare, rapid reaction airmobile forces, brigade combat teams and global strategic mobility.

While widely acknowledged and accepted, the predominance, universality and pervasiveness of conventional weapons were particularly well elucidated in a 2010 statement by Belgian Ambassador Jean Lint, on behalf of the European Union, to the First Committee - Conventional Weapons - of the United Nations (UN) General Assembly. Calling for a “strong and robust” treaty on trade in arms, Lint underscored the prevailing and expanding global threat posed by conventional weapons. In addition to inestimable death, destruction and the constant threat to security, he also noted more insidious, asymmetric perils, including violations of international law, destabilisation of states and regions, and impediments to political, economic and social development.¹⁰ Australian Ambassador for Disarmament, Peter Woolcott, echoed Lint’s characterization in 2013:

¹⁰ Ministry of Foreign Affairs, *Statement by Ambassador Jean Lint on Behalf of the European Union at the First Committee – Conventional Weapons – 65th Session of the United Nations General Assembly* (New York: Delegation of the Kingdom of Belgium to the United Nations, 2010), n.p.

More than any other category of weapon, conventional arms kill, maim and bring unspeakable suffering to millions around the world every year. The unchecked availability and misuse of these weapons and their ammunition fuel conflict and instability, threaten lives and livelihoods, and result in widespread violations of humanitarian law. These weapons are, without doubt, the world's biggest killers.¹¹

The enduring threat posed by contemporary conventional armaments and equipment has been duly reflected in the nature of the arms control agreements, conventions and arrangements that have been established. Of these, some have sought total disarmament through territorial demilitarisation (e.g., the 1959 *Antarctic Treaty*) or the outright elimination of entire classes of weapons (e.g., the 1997 *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* and the 2008 *Convention on Cluster Munitions*). Others were conceived to establish common export policies and regulate trade on conventional armaments and associated technologies (e.g., 1996 *Wassenaar Arrangement* and the 2013 *Arms Trade Treaty*). Emergent frameworks include the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons (SALW) in All Its Aspects, which is focused upon weapons ranging from handguns and assault rifles, to light-crewed portable and vehicle-mounted guns, mortars, missiles and other ordnance.

Of these varied mechanisms, the CFE Treaty, the Vienna Document and the Open Skies Treaty have come to be widely regarded as the definitive conventional arms

¹¹ Department of Foreign Affairs and Trade, *UNGA68 First Committee: Thematic Statement on Conventional Weapons. Statement by Ambassador Peter Woolcott, Australian Permanent Representative to the United Nations, Geneva and Ambassador for Disarmament* (New York: Australian Permanent Delegation to the United Nations, 2013), 1.

control regimes. Indeed, the CFE Treaty has been broadly recognized as having truly historic significance in both concept and achievement, as noted by Richard A.

Falkenrath:

To a large extent, the CFE Treaty now defines what we mean by the term “conventional arms control” – the negotiation of strict quantitative limits on conventional military equipment, codified in a legally-binding treaty, and backed up by an array of transparency-inducing and verification measures – and CFE provides the standard against which all future conventional arms control endeavors will be judged.¹²

It is entirely appropriate that the three principal regimes are largely centred upon Europe, a continent beset by conflict throughout its political existence and which has historically possessed the world’s largest concentration of conventional forces and armaments. Comprising 50 states, more than 730 million people and a third of the world’s wealth, Europe figures prominently because of its economic importance and political power (as exemplified by the 28-member European Union), which brings with it the attendant responsibility to shoulder its due share of the global security burden -- both within its own space and throughout the world.

While its fundamental principles have arguably remained sound, the past 20 years have witnessed increasing impediments placed upon conventional arms control, both as an applied concept and as an effectual instrument of multilateral security and stability. While clearly a function of a rapidly fluctuating and increasingly complex security environment, the present state of affairs can also be specifically linked to significant breakdowns within the principal regimes’ own operating models. Once a

¹² Richard A. Falkenrath, *Shaping Europe’s Military Order. The Origins and Consequences of the CFE Treaty* (Cambridge: MIT Press, 1995), 242-243.

key component of international foreign policy consensus, conventional arms control has become a highly contentious element of security cooperation. Indeed, the Russian Federation's highly controversial self-imposed suspension of CFE Treaty compliance in December 2007, along with its 2014 de facto annexation of Ukraine's Autonomous Republic of Crimea represent defining moments in what has proven to be the steady and prolonged degradation and decline of conventional arms control and CSBM.

An overall lack of understanding and awareness of the oversight and management of conventional arms control and CSBM regimes has led to a commonly held view that noted deficiencies are the result of their having "lapsed" in terms of practical utility. That is, having largely served their intended purpose, these instruments have simply fallen victim to their own success. As noted by the Stockholm International Peace Research Institute:

Arms control had already suffered a relative demotion soon after the end of the cold war in the light of massive agreed and voluntary defence reductions and the plethora of other security arrangements, mechanisms and institutions that effectively helped enhance the sense of security on the continent...¹³

In his appraisal of European security, Wolfgang Zellner observed that neglect by political leaders in light of more urgent crises and concerns have contributed to "the stagnation of European security policy issues," themselves strongly influenced by conventional arms control and CSBM regimes. While acknowledging that more immediate security dilemmas, such as those in the Middle East, Africa and North Korea had frequently supplanted European imperatives, Zellner nevertheless asserted that, "the

¹³ Stockholm International Peace Research Institute, "The Relevance of Conventional Arms Control in Europe." (3 February 2006) *SIPRI 2004-2009 Archive* [journal-on-line]; available from: [http://archives.sipri.org/search?Searchable Text=relevance](http://archives.sipri.org/search?Searchable+Text=relevance); Internet; accessed 7 April 2013.

latter's continued neglect can have and has had dire consequences.”¹⁴ His point has been well demonstrated by Europe's increasingly destabilised security framework, as evidenced by the on-going conflict in eastern Ukraine and corresponding responses by the North Atlantic Treaty Organisation (NATO) and European states to Russian aggression.¹⁵

While the obsolescence of conventional arms control as an applied concept has been frequently cited amongst the main causes of its decline, it can be argued that the disparagement of the fundamental integrity and utility of the principal regimes can, in many respects, be similarly applied to the international system writ large, including its corresponding legal apparatus and security structures. This is particularly relevant in terms of states' compliance and conformity with binding multilateral frameworks as elemental functions and measures of consensus-based cooperation in general. After all, any form of international cooperation, regardless of provisions, remains largely contingent upon states' willingness to subject themselves to some “pattern of obedience and predictable behaviour,” in keeping with the principle of *pacta sunt servanda*: the customary norm of states to commonly adhere to agreements.¹⁶ This principle is universally undermined by non-compliance and non-conformity. As Heath Pickering argues, conflict represents the logical outcome of sustained non-compliance; that is, “conflict only arises when countries fail to comply.”¹⁷

¹⁴ Wolfgang Zellner, “Conventional Arms Control in Europe: Is there a Last Chance?” *Arms Control Today* (March 2012) [journal-on-line]; available from www.armscontrol.org/act/2012_03/Conventional_Arms_Control_in_Europe_Is_There_a_Last_Chance#4 March 2012; Internet; accessed 18 April 2012, n.p.

¹⁵ France 24, “NATO: Russian ‘aggression’ in Ukraine must be countered,” *France 24*, 24 June 2015 [journal on-line]; available from <http://www.france24.com/en/20150624-nato-russian-aggression-ukraine-must-be-counteracted>; Internet; accessed 10 August 2015, n.p.

¹⁶ Mark W. Janis, *An Introduction to International Law*, 11.

¹⁷ Heath Pickering, “Why Do States Mostly Obey International Law?” *E-International Relations Students* (May 2013) [journal on-line]; available from <http://www.e-ir.info/2014/02/04/why-do-states-mostly-obey-international-law/>; Internet; accessed 19 February 2014, n.p.

The cumulatively positive effects of conventional arms control and disarmament regimes began to rapidly diminish after 2000. While some experts have suggested that the shift in the international security paradigm following the 11 September 2001 terrorist attacks in the United States constituted a key inducement of this change, it is more commonly acknowledged that the overall effectiveness of international arms control regimes had essentially reached “critical mass” as early as 1999. According to Nobuyasu Abe, growing impediments to arms control have paralleled the evolutions of an international security environment characterised by countless political setbacks, widespread non-conformity with established provisions, breaches of legally- and politically- binding commitments, growing unilateral action and significant increases in terrorist and other non-state actor activities. All of these developments have served to seriously undermine the fundamental integrity of the principal regimes.¹⁸

So how did we really get here? This thesis seeks to answer this question through the examination of the three “core” conventional arms control and CSBM mechanisms: the CFE Treaty, the Vienna Document and the Treaty Open Skies. Before laying out its methodology and approach, it is first necessary to identify where the thesis fits into the existing literature in the field.

Literature Review

Studies on conventional arms control are, to say the least, extensive. Indeed, a substantial body of work exists, ranging from the raw data contained in operational-level reports and returns, to the highest levels of academic, technical and scientific

¹⁸ Nobuyasu Abe, “The Future of Arms Control and Disarmament is Seriously Threatened,” 1-2.

analysis. Clearly, research undertaken over the past 30 years complements an extensive range of work on proliferation security that includes nuclear, chemical and biological fields. While many studies are historical in nature, others are highly conceptual or analytical in their orientation, particularly within the sphere of foreign and international security policy. Technical and scientific research is frequently oriented towards more indicative aspects of conventional arms control. In all, subject-related literature is decidedly diverse and includes the development of applied theories, practices and techniques; assessment of social and environmental impacts; monitoring and statistical accrual; and the formulation of highly specialised technologies and methods, such as mathematical modelling. Indeed, the resources applied to theoretical and applied research on conventional arms control by government and non-government research centres, think tanks and independent sources are considerable. There are also more plebeian studies dedicated to public education, awareness and outreach on arms control and non-proliferation, including exchanges of information on all aspects of associated policies, methodologies and technology.

Within this wide range of research and study, some efforts are suitably concerned with regime concepts, policies, structures, technical properties and other explicit facets. They may also involve an assessment of regime characteristics and performance in fulfilling their intended purpose, or how they correspond with other competing requirements. Other studies are more exclusive, including those focused upon regimes' relationships with particular security issues. These might include conventional arms trade and trafficking, technological advancements, or regulatory modifications. A contextual foundation is frequently employed, such as state

sovereignty, collective security or the protection of individuals. In other instances, an assay of regimes against various established international relations theories is utilised.¹⁹

At this juncture, it is important to emphasize that it is not the author's intent to deprecate the vast body of research undertaken on conventional arms control, but rather to denote individual and collective paucities in the interpretation and analyses of the root causes of its decline. Nevertheless, taking the argument that breakdowns in the essential mechanics of the principal regimes (i.e., their fundamental oversight and implementation) have been largely overlooked, it is useful to note the renowned American strategist Bernard Brodie's somewhat stern appraisal of arms control studies. Brodie, a leading architect of early nuclear deterrence strategy, was fervent in his assertion that, "the volume of literature on arms control contrasts sharply with the dearth of results in actual armaments limitation or control."²⁰ Furthermore, he noted that disproportionality between the advice provided and practical outcomes were indicative of the "character of that advice and the magnitude of the practical difficulties – and especially about the failure of the former to adjust to the latter."²¹ Finally, in bemoaning the lack of utility of the vast majority of research undertaken in arms control, Brodie attributed this first and foremost to the "persistent failure to clarify and analyze objectives," which precluded the "pragmatic approach" required:

...we want our objectives to be mutually consistent, to be worth achieving and to be in some degree achievable – and that in turn entails a properly empirical utilization of our experience.²²

¹⁹ Oran Young, *Governance in World Affairs*, (Ithica: Cornell University Press, 1999), 4-6.

²⁰ Bernard Brodie, "On the Objectives of Arms Control," *International Security*, Vol. 1, No. 1 (Summer 1976): 17.

²¹ Bernard Brodie, "On the Objectives of Arms Control:" 17.

²² Ibid: 17.

Brodie's views can therefore be regarded as somewhat analogous to this thesis, which employs empirical case studies to establish the critical relationship between regime model functionality and the overall diminution of conventional arms control.

Within an extensive range of arms control studies, the work of Jozef Goldblat clearly stands out. A universally acknowledged expert who dedicated his life to the field of arms control and disarmament, Goldblat's extensive knowledge provides a fundamental frame of reference for all facets of arms control research. His definitive book, *Arms Control: The New Guide to Negotiations and Agreements, Second Edition*,²³ is unparalleled as both an exhaustive historical account of arms control and disarmament, but also as an extensive reference and analytical resource, covering the full spectrum of proliferation security, including the principal treaties, conventions, agreements and associated arrangements. Although it only indirectly addresses the principal concerns identified in this thesis, Goldblat's accounts, assessments and perspectives nevertheless encompass associated operational, political and legal considerations and as such, provide a valuable overarching resource in exploring the trends and developments of the major conventional regimes.

In *Strategy and Arms Control*,²⁴ Thomas C. Schelling and Morton H. Halperin provide a detailed analysis in which they contend that arms control represents a de facto component of military strategy. Their central argument is that the cooperative frameworks established by arms control regimes can complement or, in some instances, actually fulfil strategic military objectives. In spite of this view, they de-emphasise the

²³ Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements. Second Edition* (London: SAGE Publications, 2002).

²⁴ Thomas C. Schelling and Morton H. Halperin, *Strategy and Arms Control* (New York: Twentieth Century Fund, 1961).

importance of one of arms control's key facets -- verification -- in favour of the view that the mutual interest of parties is better supported by the persuasive demonstration of self-initiated compliance. While this well-known work provides a number of highly relevant and useful observations and deductions, its effective dismissal of verification as an essential component of arms control is indicative of the selectivity and exclusiveness of works of this nature.

In *The Nation's Safety and Arms Control*,²⁵ Arthur T. Hadley fully acknowledges the utility of arms control. Rather than discussing particulars concerning its applied concept or associated challenges, however, he largely refers to it as a somewhat indeterminate, subsequent application to the strategic stabilization that must be first achieved through balanced deterrence. Acknowledging the inherent persistence of impervious "second strike" strategic nuclear weapons, Hadley advocates both the establishment and sustainment of controlled levels of these "stable" deterrent weapons and forces. He also acknowledges, with caveats, the strategic requirement for and utility of conventional armaments employed below the nuclear threshold. While generally consistent with the major precepts of arms control, Hadley's 1961 appraisal provides only passing consideration of the challenges inherent with the establishment and implementation of corresponding mechanisms, thereby overlooking various critical linkages.

Robert Axelrod's *The Evolution of Cooperation*²⁶ warrants specific mention, given the relevance of its central precept of cooperation theory (derived from the "Prisoner's Dilemma" theory of decision analysis) to the criticality of consensus and

²⁵Arthur T. Hadley, *The Nation's Safety and Arms Control* (New York: The Viking Press, 1961).

²⁶Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984).

conformity in the uniform fulfilment of obligations. Axelrod's definitive principles can be directly applied to the author's assertions regarding the association between breakdowns in regime operating models with the overall decline of conventional arms control and CSBM. Accordingly, Axelrod's insights are further considered in the context of this study.

Conventional Arms Control and East-West Security,²⁷ edited by Robert D. Blackwill and F. Stephen Larrabee in 1989, provides a useful compendium of expert contributions from which to base comparative assessments and trend analyses. This work includes evaluations from leading political and diplomatic figures from both sides of the East-West negotiating table and provides excellent insights into the mainstream thinking that existed during the key phases leading up to the Helsinki Final Act, which established the framework for the Organisation for Security and Cooperation in Europe (OSCE). While this book also provides a relevant frame of reference for subsequent military and political developments ranging from doctrine to verification, this is accomplished within a rather broad context.

Complementary to Blackwill's and Larrabee's work, *Arms Control: Moral, Political and Historical Lessons*,²⁸ edited by Kenneth W. Thompson, provides a unique series of perspectives on arms control writ large, including views calling for a shift in the focus of regimes from their technical and scientific orientations, to those more social and moral in nature. Useful lessons of history, as reflected in long-established strategic foreign and security strategies and policies, are also noted.

²⁷Robert D. Blackwill and F. Stephen Larrabee, editors, *Conventional Arms Control and East-West Security* (Durham: Duke University Press, 1989).

²⁸ Kenneth W. Thompson, editor, *Arms Control: Moral, Political and Historical Lessons* (Lanham: University Press of America, 1989).

Sergey Koulik's and Richard Koukoski's *Conventional Arms Control: Perspectives on Verification*²⁹ comprises focused examinations of specific political and operational issues facing the three principal regimes during their initial years of implementation, along with other considerations concerning respective (East-West) negotiating perspectives and underlying strategies. The book also furnishes an interesting and useful comparative projection of future developments and considerations, taking into consideration "real world" developments, such as the Gulf War, and their impact upon the practical application of these regimes.

In *The Future of Arms Control*,³⁰ Michael Levi and Michael O'Hanlon observe that arms control, once a pillar of United States foreign policy, has rapidly fallen out of favour with policymakers at a time when it is needed more than ever. They argue the need for both adapted forms of arms control and coercion -- including the use of military force -- as critical tools within an integrated strategy of counter-proliferation. In this heady work, the authors apply established precepts within the current international security construct, calling for better international approaches to address evolving and emerging technologies. Levi and O'Hanlon further call for more focused effort in realigning priorities to counter the most imminent threats in nuclear, chemical and biological weapon capability, while also taking into account other areas of concern, including conventional weapons. Fundamental conceptual aspects of arms control -- such as early warning -- are endorsed, along with the demand for a broader range of coercive actions in response to violations. The authors also advocate the collective

²⁹ Sergey Koulik and Richard Koukoski, *Conventional Arms Control: Perspectives on Verification* (London: Oxford University Press, 1994).

³⁰ Michael A. Levi and Michael E. O'Hanlon, *The Future of Arms Control* (Washington: Brookings Institution Press, 2005).

involvement of like-minded democratic states in building synergies within the broader international security framework.

In contrast, *Arms Control and Cooperative Security*,³¹ edited by Jeffery A. Larson and James J. Wirtz, provides a far-reaching collection of more recent expert studies that touch upon virtually every aspect of proliferation security. They include critical reviews of established theories, historical background, changes within the global security dynamic and potential future applications and adaptations. While much of this collection well-exceeds the scope of this thesis, specific chapters, such as K.M. Kartchner's "The Evolving International Context," M. Moodie's "Regional Perspectives on Arms Control," and R.E. Johnson's "Arms Control, Universality, and International Norms" provide useful backgrounds and perspectives.

In *New Forms of War and Arms Control in the Middle East*,³² Anthony H. Cordesman discusses the "unpleasant truths" and "iron laws" that have come to constrain arms control. He further notes the "panacea" effect that many conventional arms control initiatives have produced, resulting in unrealistically high expectations and, ultimately, failure. One of Cordesman's key premises is that, despite the successes attained in reducing and limiting conventional weapons, the world has remained heavily armed and nations that wish to go to war would always be able to do so. Furthermore, any form of arms control or disarmament will lead to the development of weapons exempt from controls, necessitating constant revisions to any given control regime. Finally, he asserts that verification and inspection protocols have never been sufficiently

³¹ Jeffery A. Larsen and James J. Wirtz, editors, *Arms Control and Cooperative Security* (Boulder: Lynne Rienner Publishers, 2009).

³² Anthony H. Cordesman, *New Forms of War and Arms Control in the Middle East* (Washington: Center for Strategic and International Studies, 2000).

reliable to ensure total compliance; that agreements are typically “most binding” on the “least threatening” states; and that overly complex protocols will invariably fail.

Accordingly, in order for arms control mechanisms to succeed, it must be understood that “arms control works best when it creates a stable balance of war-fighting capability that minimizes the incentive to initiate and/or escalate a conflict.” Moreover, the “threat of extended deterrence and punitive action” is necessary to support enforcement, which itself is encumbered by the complexities of establishing and maintaining the necessary international coalitions.³³

The wide range of relatively succinct, but no less relevant articles, critiques, commentaries and editorials generated by major international policy think tanks, expert groups, advisory boards and various other organisations, provide ample sources of comparative data and analysis for specific cross-referencing and validation purposes. James L. Foster’s “The Future of Conventional Arms Control”³⁴ foresaw, in 1975, the challenges of adapting arms control within the context of reinforced nuclear parity and significantly enhanced conventional military capabilities. From this, Foster suggested that advances in conventional weapons technology would translate into increased incentive for corresponding strategies that would call for larger conventional forces and corresponding recapitalisation. Despite the overall significant reductions in conventional forces throughout Europe and Central Asia that have since ensued, the logic of Foster’s posit has been proven valid in a number of instances. Consistent with many other experts, Foster emphasised the imperative of suitable arms control measures

³³ Anthony H. Cordesman, *New Forms of War and Arms Control in the Middle East*, 2-3.

³⁴ James L. Foster, “The Future of Conventional Arms Control,” *RAND Paper* (Santa Monica: RAND Corporation, 1975).

to address the effects of advancing conventional weapon technologies, while also acknowledging the inherent complexities in achieving this.

In “Frozen Obligations: Russia’s Suspension of the CFE Treaty as a Potential Violation of International Law,”³⁵ Adam Collicelli furnishes a highly detailed, focused and convincing “single-purpose” legal assessment of Russia’s December 2007 suspension of its binding implementation obligations under the Treaty. Collicelli’s work provides a singularly distinct appraisal that validates the positions taken by several other States Parties that initially challenged Russia’s actions, but subsequently deferred these challenges in favour of more conciliatory courses intended to persuade Moscow to return a state of compliance and conformity. Collicelli concludes that Russia’s actions were likely illegal under international treaty law, noting that additional factors have further compounded the situation. This highly insightful legal review provides detailed and relevant particulars on critical aspects of the current state of the CFE Treaty that directly relate to key elements of this thesis.

Other more recent and specifically targeted materials include Wolfgang Zellner’s article, “Conventional Arms Control in Europe: Is there a Last Chance?”³⁶ In describing the realities of European security (in contrast with the mainstream views of the OSCE and NATO) Zellner delivers a pragmatic appraisal of the CFE Treaty, noting that the current stalemate in relations between NATO and the Russian Federation, along with other closely linked factors, are central to the regime’s progressive degradation.

³⁵ Adam Collicelli, “Frozen Obligations: Russia’s Suspension of the CFE Treaty as a Potential Violation of International Law” (*Boston College International and Comparative Law Review*, Volume 2, Issue 2, Article 11 (2009)): 331-352.

³⁶ Wolfgang Zellner, “Conventional Arms Control in Europe: Is there a Last Chance?” *Arms Control Today*, Arms Control Association [journal-on-line]; available from www.armscontrol.org/act/2012_03/Conventional_Arms_Control_in_Europe_Is_There_a_Last_Chance#4 March 2012; Internet; accessed 18 April 2012.

Zellner concisely examines the requirement for conventional arms control and validates this with several caveats relating to weapons categorizations and jurisdictional applications. He then outlines five elements required for conventional arms control to be “restarted.” This includes an “entirely new conceptual approach” intended to bypass mainstream thinking relating to the CFE Treaty’s successor -- the 1999 Adapted CFE Treaty -- which, lacking ratification by most signatories, never entered-into-force.

In “Arms Control, Export Regimes and Multilateral Cooperation,”³⁷ Lynne E. Davis acknowledges “the important limits to what arms control has been able to accomplish,” further noting that newer weapon systems had escaped controls and that governments were increasingly resisting imposed limitations, despite the clear understanding that agreement to such limitations would reduce threats and prevent conflict. Davis further acknowledges the emergence of “more diffuse” security threats following the end of the Cold War; including the complexity and widespread abundance of conventional weapons. Noting that all nations consider conventional weapons essential for their own defence, Davis opines that specific threats will only develop under certain circumstances, such as when these weapons are acquired by rogue states or terrorist actors.

Other similarly focused reports and articles include:

- *Assessing Compliance with Arms Control Treaties*,³⁸ produced by the Geneva Centre for Security Policy in 2007, in collaboration with the

³⁷ Lynne E. Davis, “Arms Control, Export Regimes and Multilateral Cooperation,” in *Strategic Appraisal: The Changing Role of Information in Warfare*, ed. Zalmay Khalilzad and John White, 361-377 (Santa Monica: RAND Corporation, 1999).

³⁸ Geneva Centre for Security Policy, *Assessing Compliance with Arms Control Treaties. Report of the International Group on Global Security – IGGs September 2007* (Geneva: GCSP, 2007).

French Centre d'études de sécurité internationale et de maîtrise des armements. This publication entails both a detailed study by experts, which assesses the current state of compliance, along with a report of an international seminar that includes contributions from several notable experts in the field, including Jozef Goldblat and Nobuyasu Abe; and

- *Prospects for Arms Control in Europe*,³⁹ a 2011 collaborative study by the Institute for Peace Research and Security Policy (University of Hamburg). This work renders valuable insights into the existing Russia-NATO strategic disparity, provides linkages between conventional and nuclear arms control, and examines specific mitigating approaches aimed at improving confidence- and security-building collaboration in key areas. These include missile defence, updating controls to encompass newer conventional capabilities and eliminating legacy systems that are no longer viable.

Despite the relevance and utility of these mainstream studies, there remain notable paucities in relating indicative observations and analysis with the elemental functionality of conventional arms control regimes. Indeed, few have so much as touched upon the constituent components of, and interactions within, the regime models themselves. This has resulted in more abstracted determinations that have fallen short of fully distinguishing the root causes of the breakdown and decline of conventional arms control. Therefore, while acknowledging that these studies provide numerous correlations and broadened retrospection, this thesis seeks to close the gap between *symptomatic* and *systemic* factors, thereby ensuring a more inclusive appraisal. The greater depth of analysis attained through this approach, together with the use of case studies and numerous primary reference materials, allows for a more comprehensive

³⁹ M. Brzoska, *et al*, "Prospects for Arms Control in Europe" (Berlin: International Policy Analysis, 2011).

understanding of the fundamental causes, outcomes and consequences of the deterioration of conventional arms control.

Methodology

This thesis addresses the following principal research question: why has there been a decline in contemporary conventional arms control? It also examines two subsidiary, although important, questions: what are the implications of this decline; and what are the prospects of its rehabilitation and revival? To answer these questions, a case study approach is employed to systematically examine the emergence, development and deterioration of the three core conventional arms control and CSBM mechanisms: the CFE Treaty, the Vienna Document and the Open Skies Treaty. This allows for a detailed and focused analysis of the underlying political, strategic, organisational and operative factors that led to these innovations in multilateral arms control, as well as their subsequent diminution. By examining the three different, albeit inter-related, mechanisms using a common framework, it is possible to generate stronger conclusions about the fate of conventional arms control than would be the case by studying a single mechanism.

Case Studies

Case study is a well-established research methodology that generally involves the examination of a given issue, entity or occurrence within its naturally occurring circumstances in order to obtain suitably focused conclusions and recommendations. Social scientist Robert K. Yin characterises it as “an empirical investigation of a

contemporary phenomenon within its natural context using multiple sources of evidence.”⁴⁰ Highly adaptable, case studies can involve single or multiple items of examination and may employ both quantitative and qualitative data from multiple sources. As such, they are commonly employed in various disciplines.⁴¹ Nonetheless, case study methodology is best utilised in areas of research that are conducive to in-depth analysis within their inherent circumstances, employing varied sources of information.⁴²

Pamela Baxter and Susan Jack highlight the value of case studies in not only addressing the fundamental questions of “how” and “why,” but also the added insight gleaned through consideration of the contexts within which given subjects are situated.⁴³ They identify the use of a conceptual framework; research questions; the logic employed in linking data to propositions; and specified criteria for interpreting findings as common elements in the design and implementation of a rigorous case study.⁴⁴ They further note the judicious use of research propositions in the parameters of a given study, so as to remain within feasible limits.⁴⁵

Despite the acknowledged merits of case study methodology, the basis of its suitability also includes some inherent limitations. Sharan B. Merriam notes that, while a highly detailed description and analysis of a given phenomenon may be sought, there

⁴⁰ Robert K. Yin (2003), as cited by Dawson R. Hancock and Bob Algozzine, *Doing Case Study Research, A Practical Guide for Beginning Researchers* (New York: Teachers College Press, 2006), 15.

⁴¹ Robert K. Yin. *Case Study Research: Design and Methods*. 5th Edition (Thousand Oaks: Sage Publications, 2014), 5-6.

⁴² Dawson R. Hancock and Bob Algozzine, *Doing Case Study Research, A Practical Guide for Beginning Researchers*, 16.

⁴³ Pamela Baxter and Susan Jack, “Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers,” *The Qualitative Report* Volume 13 Number 4 (December, 2008): 556.

⁴⁴ Pamela Baxter and Susan Jack, “Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers.” 550-551.

⁴⁵ *Ibid*: 551.

may not exist sufficient time or resources to accomplish this. Conversely, when sufficient time and resources do exist, research outcomes may prove too lengthy or detailed for practical use.⁴⁶ Furthermore, as the “primary instrument of data collection and analysis,” the individual researcher is largely left to his or her own predilections and abilities, which could affect a study’s integrity and validity.⁴⁷ Similarly, Jacques Hamel refers to case studies’ general lack of “representativeness” and rigor in the collection, assembly and analysis of empirical materials, which he attributes to bias and subjectivity on the part of the researcher and others involved.⁴⁸

It can therefore be seen that case studies’ advantages also include certain innate weaknesses. Given this, Christine Benedichte Meyer stresses the need for case studies to be as clear and definite as possible in the methodological choices made. She further notes the advantage of longitudinal, comparative case studies over single case studies’ “generalizability.”⁴⁹ Finally, she calls for researchers and recipients alike to be aware of the biases and other constraints that can ultimately affect a given case study.⁵⁰

For this thesis, case study methodology entails the comparative examination of conventional arms control within a common context, employing multiple sources of evidence. Oriented upon the central proposition that the decline of conventional arms control can be further attributed to breakdowns in the elemental operating models of the three principal regimes, a chronological overview of their governance, management and

⁴⁶ Sharan B. Merriam, *Qualitative Research. A Guide to Design and Implementation* (San Francisco: Jossey-Bass, 2009), 51-52.

⁴⁷ Sharan B. Merriam, *Qualitative Research. A Guide to Design and Implementation*, 52.

⁴⁸ Jacques Hamel (1993), as cited by Sharan B. Merriam, *Qualitative Research. A Guide to Design and Implementation*, 52.

⁴⁹ Christine Benedichte Meyer, “A Case in Case Study Methodology,” *Field Methods*, Vol. 13, No. 4 (November 2001): 350.

⁵⁰ Christine Benedichte Meyer, “A Case in Case Study Methodology:” 350.

implementation is undertaken from their inception to the 2014 Ukraine crisis. This provides both a manageable range and standardised frame of reference within which to conduct a more uniform contextual analysis, even though each regime concerns a particular aspect of conventional arms control. That is, the CFE Treaty establishes verifiable zonal limits upon specific types and quantities of major conventional armaments, equipment and personnel; the Vienna Document establishes verifiable limitations on certain military activities, along with military contacts, cooperation and information exchange provisions; and the Open Skies Treaty provides for the airborne observation and imaging of military or other national objects or activities of concern.

The use of case studies methodology in this thesis therefore facilitates the determination of the “how’s and why’s” of conventional arms control’s overall decline, along with estimations of its consequences, implications and prospects of recovery. This is accomplished through the following:

- review of the contextual background and pre-history of conventional arms control and CSBM, taking into account fundamental concepts, associated principles and doctrine, major evolutions and developments leading to the establishment of the three principal contemporary regimes;
- empirical analysis of these three regimes in terms of their effect upon conventional arms control and CSBM in their applicable zones, areas and regions of application -- this is largely undertaken from a functional perspective, with corresponding linkages to associated legal and political frameworks;
- analysis of the relationships of these regimes with the OSCE, States Parties, participating States, alliances and associated entities;

- based upon these analyses, an overall appraisal of the current state and consequent impact of these regimes within their respective jurisdictions, along with the broader consequences and implications for international peace and security; and
- to the extent possible, estimation of the prospects and possible courses of recovery, sustainment and improvement, where deemed practicable.

Analytical Framework

The analytical framework applied to this thesis consists of the systematic appraisal of information and data derived from the three empirical case studies and the compilation of validated findings as a response to the research questions. The uniform analysis of this information is attained through their measurement and evaluation against specified criteria. These criteria begin with the purpose, objectives, provisions, technical standards and norms established under the regimes themselves. Together they constitute the essential benchmark against which compliance, conformity, contraventions, deviations, ambiguities or other variations are measured and assessed in terms of their impact upon conventional arms control as an applied concept. Regime governance and management, along with measures undertaken to further evolve and adapt, are also specifically accounted for. Closely related factors encompass operative aspects, such as regime design, feasibility and effectiveness (e.g., limiting proliferation, security-building, verifiable and enforceable provisions), along with fundamental value, in terms of deterrence, early warning and related intelligence. Broader considerations include:

- political and military ideologies;

- states' individual and collective interests, strategies and degrees of cooperation;
- the influence of major powers and alliances;
- the impact of political will in both enabling and impeding the common coherence and accord required in establishing and maintaining regime integrity; and
- application in response to conflict prevention, crisis management and post-conflict mitigation.

More equivocal considerations -- such as political stability, national and institutional capacities, complacency and apathy, along with the inherent uncertainty of the international security environment -- are also gauged in terms of their effect upon parties' fulfilment of obligations and exercise of rights, as prescribed under the regimes' normative structures.

Sources

Research for the case studies necessitated an extensive examination of both primary and secondary sources. Primary sources include governing treaties and documents themselves, applicable official implementation-related reports and returns, consultative records and related technical data produced by inter-governmental organisations (OSCE, NATO, etc.). Applicable media-generated material has also been utilised. Other primary sources encompass official documents and related information from national government departments and their subordinate proliferation security organisations and agencies. Key organisations in this respect include: the United States

Bureau of Arms Control Verification and Compliance (Department of State), the Defense Threat Reduction Agency (Department of Defense) and the Weapons Intelligence Non-Proliferation and Arms Control Center (Central Intelligence Agency); the United Kingdom Arms Control and Disarmament Department (Foreign and Commonwealth Office), the Arms Control and Counter Proliferation Policy Department (Ministry of Defence) and the Joint Arms Control Implementation Group (Ministry of Defence); the German Bundeswehr Verification Centre (Federal Ministry of Defence); the French Unité Française de Vérification (Ministry of Defence); the Russian National Nuclear Risk Reduction Centre (Ministry of Defence); the Swiss Implementation and Verification Unit (Federal Department of Defence); and the Canadian International Security Bureau (Global Affairs Canada – formerly, the Department of Foreign Affairs and International Trade) and the Strategic Joint Staff Arms Control Verification Directorate (Department of National Defence).

One research challenge concerned access to, and the releasability of classified (e.g., CONFIDENTIAL, SECRET and higher) and protected (e.g., TREATY SENSITIVE, RESTRICTED, PROTECTED A, PROTECTED B) primary source documents. While the author's former appointments have served to some advantage in accessing such information, authorisation for release under the applicable official access mechanisms was frequently denied or otherwise heavily restricted. Accordingly, particular care has been exercised in extrapolating and interpreting pertinent information, while remaining strictly within the terms and conditions of the *Security of Information Act*, *Officials Secrets Act* and other applicable laws and regulations of the United Kingdom, Canada, the United States and other allied nations.

First-hand accounts and perspectives have been acquired through a wide-range of consultations and documented semi-structured interviews with key subject matter experts at various levels. These include policy officials, diplomats, operational and technical personnel, academics and other involved individuals. In several instances, however, despite the academic attribution assurances provided, requests for interviews were flatly rejected on the basis of the national policies of the states involved. Despite these and other constraints encountered regarding both the releasability and attribution of information, the interview process has nevertheless served to partially mitigate an overall lack of material specifically pertaining to the governance-management-implementation models and interrelationships of the three conventional arms control regimes examined.

With respect to secondary sources, the thesis draws on the considerable amount of academic, foreign policy and technical/scientific work on conventional arms control produced over the past several years, along with myriad “single-issue” studies and published papers on specific aspects of core concepts and apposite applications. In addition to academic studies, published documentation from non-government organizations, agencies and centres of expertise has been scrutinised, including that produced by the Brookings Institution; the Center for Defense Information; the Centre for European Security and Disarmament; the Centre for Strategic and International Studies; the Federation of American Scientists; the Geneva Centre for Security Policy; Human Rights Watch; the Institute for Science and International Security; the International Institute for Strategic Studies; the RAND Corporation; the Stockholm International Peace Research Institute; and the Verification Research, Training and Information Centre.

These secondary sources have proven to be useful as means of correlation and in otherwise supporting the validation of criteria established under the corresponding analytical framework. This approach notwithstanding, the relative lack of research concerning the fundamental “mechanics” of extant regime models -- including the explicit linkages between arms control operations/activities and their governance, oversight and management -- has been necessarily taken into account. Indeed, the deficit in detailed analysis of conventional arms control implementation and how it is addressed within the governance-management-implementation process represents an important consideration. Indeed, few studies have undertaken detailed examinations of the functional components of the three principal regimes in question; namely, policy formulation and development; consultation and coordination; and operations/activities undertaken in support of implementation and assessment. Accordingly, this thesis employs a “practitioner’s perspective” that enables greater discernment of the working dynamics of these regimes in order to attain a more complete and balanced analysis of individual components and how they interact as a whole. This includes, for example, the identification of gaps, obstacles or other disparities between components that some experts contend have seriously constrained, if not compromised, the overall functionality of conventional arms control and CSBM.

Chapter Summaries

Following this introduction, the next chapter provides an overview of the concept, characteristics, evolution and interrelationships of the three regimes. Individual case study chapters on the CFE Treaty, the Vienna Document and the Open Skies Treaty are then presented. These are followed by an overarching analysis of the diminution of the

three regimes, together with estimations concerning their prospects of recovery. The concluding chapter provides closing determinations and “key takeaways” concerning the decline and current state of conventional arms control and CSBM. Each chapter is briefly summarised below.

Conventional Arms Control: Common Concept, Model and Evolution. This chapter provides a general overview of the concept and characteristics of conventional arms control and CSBM, their placement within the broad security spectrum, and the composition and characteristics of their common operating model. This is followed by an outline of the contemporary foundations and events leading to the establishment of the CFE Treaty, the Vienna Document and the Open Skies Treaty, illustrating the enabling preconditions, interrelationships and common consensus that were required to achieve them. The specific purpose and operative concept of each regime are also illustrated. The chapter highlights the essential value and relevance of conventional arms control and CSBM regimes as security mechanisms unto themselves, as well as vital components of the broader European, Euro-Atlantic and Eurasian security framework. This provides an important frame of reference for consideration of the case studies, analyses, characterisations and estimations that follow.

Case Study 1: the Treaty on Conventional Armed Forces in Europe. This chapter provides a detailed historical examination of the CFE Treaty’s establishment, evolution, characteristics, achievements and ultimately, its diminishment. This includes the singularly unique conditions that enabled the Treaty’s negotiation and establishment and how the subsequent collapse of the Soviet Union would leave it fundamentally conflicted throughout its implementation. As a result of this, together with a lack of

vigilance and resolve in preserving the essential functionality of its operating model, the regime became progressively dysfunctional and impaired. Consequently, despite its momentous early successes in eliminating massive holdings of conventional armaments, equipment, and military personnel levels, the Treaty was increasingly degraded and ultimately compromised by the self-imposed “suspension” of compliance by the Russian Federation. This was the result of disagreement over preconditions for the ratification of the agreed 1999 Adapted CFE Treaty. Despite the suspension’s illegality, little was done by the OSCE or individual States Parties to formally challenge it. Rather, efforts were generally focused upon redressing Russian grievances, with the hope of enabling the transition to the successor Treaty. These initiatives, left largely to the United States to coordinate, proved unsuccessful. Consequently, the United States, along with NATO and several non-NATO States Parties resorted to the imposition of “counter-measures,” thereby suspending their individual Treaty obligations as they pertained to Russia. Accordingly, the failure to formally hold Moscow legally accountable and otherwise preserve the CFE Treaty’s governance-management-implementation model reduced an already weakened regime to its severely diminished present state. While the Treaty remains in effect amongst its 29 remaining States Parties, it subsists as a nominal security mechanism at best. The CFE Treaty’s degradation and suspension provide clear examples of the implications of having compromised the integrity of a regime by failing to adhere to its established provisions, as discharged through its operating model. Although the Treaty can and arguably should continue to function as is, it will remain comparatively inconsequential as a European security regime without Russia. Nevertheless, many of its provisions might provide some basis for a future evolved, adapted or successor regime.

Case Study 2: The Vienna Document on Confidence- and Security-Building

Measures. This chapter provides a comprehensive examination of the Vienna Document's oversight and implementation from its initial entry-into-force in 1990, to its current iteration and state. It amply demonstrates that as a European and Eurasian CSBM, the Document's fundamental value is apparent. Nevertheless, despite its variance with other regimes, its provisions have been similarly impeded by a range of contraventions and infringements, further exacerbated by chronic deficiencies in the oversight and implementation of its operating model. Much of this can be linked to institutional complacency and apathy, the flagging commitment of several participating States, and a general waning of underlying political consensus at virtually all levels. These faults have directly contributed to the erosion of cooperative security and stability afforded by the regime. The chapter illustrates that, notwithstanding varied external influences, the diminishment of the Vienna Document regime is also specifically attributable to impairments in its rudimentary oversight and management. Even with various technical and procedural updates to the Document, these underlying failings have continued to undermine and weaken not only the regime itself, but also the broader European and Eurasian conventional arms control and CSBM framework. This has placed international peace, security and stability at increased risk, as exemplified by the on-going crisis in Ukraine. While there exists broad culpability, the OSCE -- as the governing institution -- is held to particular account. Given the manner in which the Vienna Document has been progressively destabilised over several years, its prospects of rehabilitation, while unclear, would require from the outset the necessary inducement to secure the reaffirmed commitment of all concerned. From there, the unambiguous, consistent application of prescribed provisions and standards through greater

institutional involvement, together with a more purposeful, disciplined approach by all concerned, would be required.

Case Study 3: The Treaty on Open Skies. This chapter examines the Open Skies regime with due attention accorded to its unique purpose and distinctive attributes as an observation-based CSBM regime, comparatively unencumbered by the quantitative and normative measurements established under the other two regimes. Also discussed is Open Skies' specific value as a reconnaissance and intelligence resource (particularly for States Parties possessing the necessary technical means of exploitation), along with the role technology has played with the introduction of digital sensors, processors and new aircraft. Another important consideration is the Treaty's broader jurisdiction, which includes the entire territories of Canada, the United States and the entire Russian Federation. The dominant roles played by Washington and Moscow and their respective efforts to advantage themselves under the regime (including significant capability investments) are also examined. As is the case with the other case studies, key developments and notable events in the oversight and operation of Open Skies are specifically scrutinised in terms of their overall impact to the Treaty's rudimentary functionality and viability. While this examination confirms Open Skies' conceptual validity and utility, varied transgressions in its implementation, combined with a combination of interference and ineptness in its governance and management, have seriously undermined its integrity. While the Treaty remains essentially functional and is certainly the least impeded of the three regimes, it is clear that continued unchecked transgressions will further erode its viability and with it, the broader conventional arms control and CSBM framework. Accordingly, efforts to rehabilitate Open Skies must

include the fundamental acceptance of and adherence to its legally binding provisions as originally envisioned and agreed.

Analysis. This chapter employs the evidence gleaned from the background and detailed case study examinations to provide a broad evaluation of the causal factors in the overall decline of conventional arms control and CSBM. Key considerations, including the views of subject matter experts, are factored into this appraisal. The effects of unchecked detraction, waning political consensus and ineffectual governance in subverting regime models are specifically noted, with the Russian Federation and OSCE explicitly cited for their respective roles. Furthermore, the chapter validates the proposition that, in addition to varied external effects, the elemental dysfunction of regime models constitutes a key, but somewhat overlooked core contributor to conventional arms control's decline. Accordingly, regime stabilisation is stressed as an initial course of mitigation, acknowledging this to be an attainable, but difficult goal. Finally, specific approaches to stabilise regime models are discussed, including measures to counteract disaccord and restore functionality. The chapter concludes with a summation of findings, including the caveated prospects of regime recovery.

Conclusions. The final, concluding chapter returns to the central theme of the thesis, noting the dramatic changes in Eurasian and Euro-Atlantic security and the dilemma presented by the diminishment of the major conventional arms control and CSBM regimes. The impact of weak governance in curbing states' transgressions against regime provisions is again highlighted. The chapter further notes that while timelier calibration or modification may have aided in stemming the degradation of regime models themselves, it is ultimately the erosion of group cohesion, conformity

and compliance that has undermined their operative integrity. An appraisal of the present state of each of the three regimes is rendered, along with an estimation of their respective prospects of recovery. While the assessed potential for restoration certainly varies, the re-establishment of each regime's essential functionality nevertheless constitutes a general imperative. A compilation of the major determinations rendered from analysis is then provided in the form of 'key takeaways,' including adjunct findings and broader considerations pertaining to regime oversight and implementation. The chapter concludes that, while current conditions do not favour major initiatives to rehabilitate conventional arms control and CSBM, internal measures to stabilise the integral functionality of existing regimes models remain a conceivable course of action. This could, in turn, enable a more viable basis upon which to undertake subsequent courses of sustainment, modification or replacement.

Summary of Overarching Conclusions

The thesis concludes that conventional arms control and CSBM regimes are indeed in an overall state of serious decline. While clearly affected by the inexorable influences of the international security environment, this decline can be further attributed to breakdowns within the regimes' respective governance-management-implementation models. While fundamental concepts have remained essentially valid, inherent disaccord, misinterpretation, complacency, non-conformity and outright wrongdoing have contributed to the progressive deterioration of these models. Clearly, the divergent conduct of some parties and unresponsiveness of others, together with deficiencies in OSCE oversight, constitute key factors in the failure to preserve the compliance and conformity required for operative cohesion and integrity.

The degradation of the CFE Treaty, Vienna Document and Open Skies Treaty has placed Euro-Atlantic and Eurasian security and stability at increased risk. Indeed, the Russian Federation's 2014 annexation of Crimea and its on-going proxy campaign in Eastern Ukraine have tragically exemplified the outcome of non-conformity with the binding provisions and cooperative security principles of these regimes. Although Russia may be cited as the leading offender, it is evident that infringements and lapses by various other States Parties and participating States have also steadily eroded the integrity, efficacy and relevance of these three "pillars of security."

While the extent of degradation varies, the CFE Treaty, Vienna Document and Open Skies Treaty are not beyond some measure of rudimentary rehabilitation that, while difficult, is arguably within the wherewithal of their governing authority and constituents to undertake. Given overarching circumstances, this would likely be best carried out initially through the stabilisation of existing operating models, from which valid determinations could then be made regarding their subsequent alteration or replacement. Accordingly, a fundamental approach to mitigate governance-management-implementation dysfunction should be accorded due priority. This calls for the OSCE and key member States to exercise fundamental leadership in shaping imperatives and inducing amenable behaviour, so as to ensure adherence to extant standards and provisions. Indeed, the continued viability of conventional arms control and CSBM clearly includes the need for suitably pragmatic courses to sustain their elemental efficacy. This may, in turn, provide a viable basis upon which to preserve fundamental concepts through suitable courses of sustainment, adaptation or succession.

CHAPTER 2

CONVENTIONAL ARMS CONTROL: COMMON CONCEPT, MODEL AND EVOLUTION

Having introduced the central proposition and methodology of this study, along with a rudimentary background, this chapter provides a contextual overview of the contemporary concept, characteristics and operating model of conventional arms control. An outline of the evolution of the three regimes, illustrating their common principles and interrelationships is then presented. Together they provide a fundamental explication of the relevance of conventional arms control and CSBM regimes as both autonomous security mechanisms and as vital integrated components of the broader European, Euro-Atlantic and Eurasian security construct. This lays the essential foundation upon which to contextualise the three case studies that follow.

Concept and Characteristics

Despite the range, orientation and complexity of contemporary arms control regimes, they nevertheless share several fundamental characteristics. Generally speaking, they are designed to reduce distrust amongst parties, thereby establishing and reinforcing confidence and security so as to avoid the escalation of adversarial capability and associated intent. This, in turn, decreases the potential for armed conflict or other threats, while establishing or improving the conditions for stability, constancy and increased cooperation. Figure 2.1 provides a basic depiction of the orientation and scope of contemporary arms control and proliferation security within the full spectrum of defence and security operations at all levels (i.e., strategic, operational and tactical).

While their preclusive and preventative characteristics are illustrated by their general placement within the “non-proliferation” band, specific elements also extend into the “counter-proliferation” band of this spectrum. They comprise:

- security cooperation and partnerships (a function of non-proliferation);
- arms control verification and proliferation security operations (again, a function of non-proliferation); and
- interdiction, reduction and elimination operations (a function of counter-proliferation), in the context of arms control mechanisms employed in the reduction and elimination (i.e., destruction, conversion) of specified weapon and equipment systems that would otherwise exceed the limits of a given control mechanism.

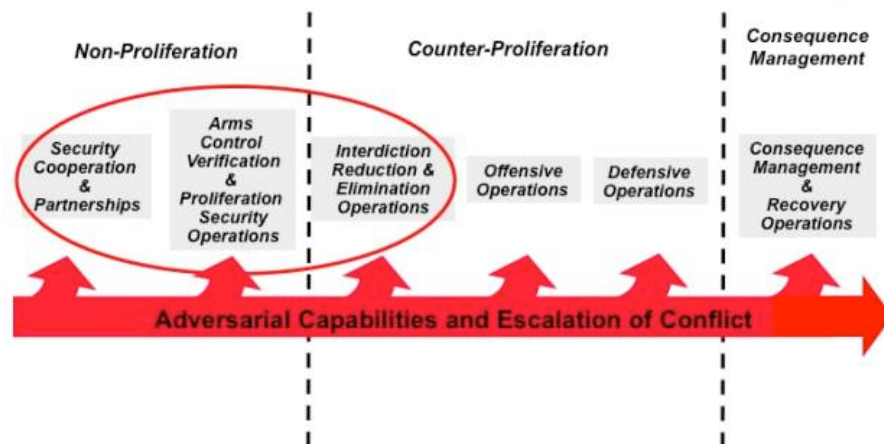


Figure 2.1: Arms control verification and proliferation security operations within full spectrum defence and security operations⁵¹

According to Jozef Goldblat, a preeminent authority on arms control and disarmament, the term “arms control” originally denoted a given regulatory regime for limiting arms competition – a connotation distinct from the “regulation of armaments” or “disarmament,” as stated in the *United Nations Charter*. Goldblat further stated:

⁵¹ Department of National Defence, Strategic Joint Staff Arms Control Verification, *General Orientation Briefing*, 8 March 2010 (Ottawa: DND Canada, 2010), 16.

... a wide range of measures have come to be included under the rubric of arms control, in particular those intended to: (a) freeze, limit, reduce or abolish certain categories of weapons; (b) ban the testing of certain weapons; (c) prevent certain military activities; (d) regulate the deployment of armed forces; (e) proscribe transfers of some militarily important items; (f) reduce the risk of accidental war; (g) constrain or prohibit the use of certain weapons or methods of war; and (h) build up confidence among states through greater openness in military matters. Today, 'arms control' is often used interchangeably with 'arms regulation', 'arms limitation', 'arms reduction' or even 'disarmament'.⁵²

With particular regard to the three conventional arms control regimes examined in this study, the aforementioned common elements can be further distilled into some of the following benefits, as extrapolated from United States National Security Strategy:

- enhancing security through the establishment and imposition of limits on the weapons, equipment and personnel of conventional military forces, thereby reducing fear and mistrust;
- providing the means to eliminate, prohibit or otherwise control and/or constrain weapons and equipment exceeding established limits;
- establishing attendant verification and compliance monitoring provisions through which to enable greater predictability and characterization of the size, structure, state and posture of forces;
- instituting complementary confidence- and security-building mechanisms through which to promote increased transparency through inter-party contacts, cooperation and collaboration;

⁵² Jozef Goldblat, "Arms Control – Basic Concepts," *Fiches Marra* (February 2011) [journal on-line]; available from <http://fichasmarra.wordpress.com/2011/02/01/arms-control-basic-concepts/>; Internet; accessed 3 December 2012, n.p.

- enabling resources allocated to defence industries to be reduced and reallocated to other national priorities; and
- ultimately contributing to increased geostrategic peace, security and stability.⁵³

The Model

A key point of emphasis in this thesis is the denotation of the fundamental requirement for balanced oversight and effectual execution of all constituent components of the major conventional arms control and CSBM regimes. These components -- comprising regime governance, management and implementation -- can be functionally broken down into policy/planning, consultation/coordination and implementation/assessment. Consistent with both doctrine and established convention, these interdependent components must interact within self-regulating, flexible and sustainable operative cycles. The sustained integrity of each regime's cycle assures vigilance and responsiveness within an integrated process of continuous feedback and improvement. The corresponding governance-management-implementation model is depicted in Figure 2.2:

⁵³ United States, Executive Office of the President of the United States, *A National Security Strategy of Engagement and Enlargement* (Washington: United States Government Printing Office, 1995), 15.

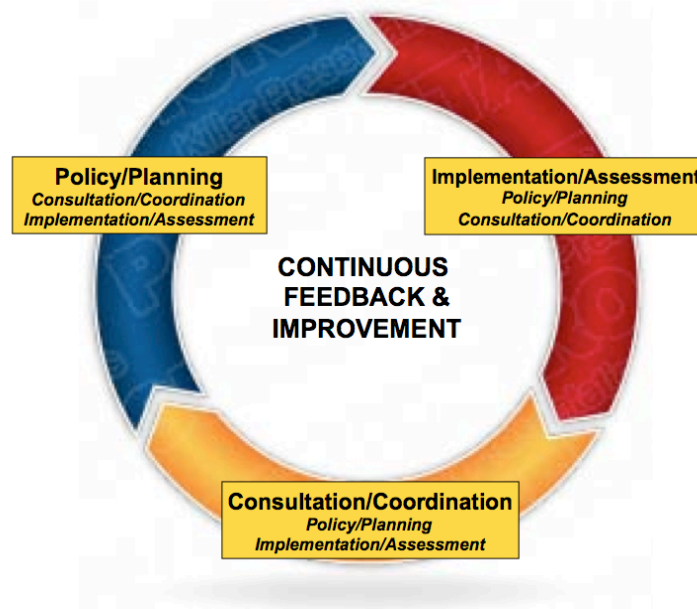


Figure 2.2: Governance-Management-Implementation Model⁵⁴

For all regimes, *compliance* and *conformity*, established and upheld through the verification, assessment and enforcement of specified standards and corresponding oversight provisions, are absolutely critical. In the context of current conventional arms control regimes, the dissimilarity between the two warrants some elaboration, as while both are closely linked in terms of fulfilling established rules and standards, their specific distinctions are particularly important; i.e.:

- *compliance* pertains to the fulfilment of obligatory requirements and specifications of a standardised nature, such as established ceilings and other limitations placed upon types of weapon and equipment systems, personnel and/or types of activity; whereas,
- *conformity* pertains more specifically to a party's conduct with respect to its manner of adherence to the established rules of governance and procedure concerning a given regime.

⁵⁴ Author's conception.

Given this, it is entirely possible to be compliant with the specified standards of a given regime, while at the same time failing to conform to the procedures and conventions associated with its implementation. An example would be a party that has fulfilled its obligations in limiting its holdings of weapon and equipment systems at a designated location, but nevertheless fails to correctly report this information. Conversely, a party could conform procedurally by fulfilling its reception of and support to a verification inspection by another party, while still failing to comply with established limitations. Of course, a party could also be (ideally) both compliant and conformant, or conversely, both non-compliant and non-conformant (worst case). Accordingly, while neither mutually exclusive nor necessarily congruent, compliance and conformity are indeed complementary and desirable. Furthermore, there certainly can and indeed do exist instances of “blurring” between the two. This is highly important when one considers the circumstances wherein a given party is endeavouring to comply, but is incapable, or others where non-compliance and/or non-conformity are deliberate, particularly when employed as a means of concealment or deception. These are key distinctions that will be addressed further in the thesis.

The Imperative of Verification

As the principal tool for determining compliance and conformity, verification has come to be commonly regarded as an absolutely essential element of contemporary conventional arms control and CSBM, as established as a general principle and employed by practitioners as operational doctrine. Simply put, verification is the process through which the validity of compliance and conformity with agreed provisions is determined, as undertaken by systematic observation, examination and/or

demonstration. The Verification Research, Training and Information Centre defines verification as “the process of gathering and analysing information to make a judgment about parties’ compliance or non-compliance with an agreement.”⁵⁵

While similar in certain respects to the acquisition of military intelligence, verification is undertaken through specific provisions that authorise and regulate such activity. While both intelligence and verification fulfil the requirement to render an independent conclusion or judgement, verification is conducted under the principles of conventional law, respects sovereignty and is reciprocal in nature. Therefore, despite the adversarial footing of arms control agreements generally, unlike espionage, verification engenders cooperation and trust.⁵⁶ Indeed, the term “trust, but verify” has become a well-known idiom that underscores the modern concept of arms control. Originally a Russian proverb (Доверяй, но проверяй - doveryai, no proveryai), it simply states that although the information provided by a given party may indeed be reliable, the other party should undertake additional measures to verify the veracity and/or accuracy of this information.⁵⁷

In order to develop a better understanding of Soviet thinking, Russian scholar Suzanne Massie was employed by President Ronald Reagan’s staff to provide a comprehensive historical and social background of the Russian people, in preparation for Reagan’s summit meetings with Soviet President Gorbachev in the mid-1980s. Over the course of no less than 18 consultations with Reagan and other senior officials, Massie successfully imparted the vital importance of the “human factor,” in engaging

⁵⁵ Hassan Elbahtimy, “The Importance of Multilateral Verification for Arms Control and Disarmament.” *VERTIC Presentation* (London: Verification Research, Training and Information Centre, 2010), 4.

⁵⁶ Hassan Elbahtimy, “The Importance of Multilateral Verification for Arms Control and Disarmament,” 6.

⁵⁷ Ronald Reagan, *Letters from the Desk of Ronald Reagan*, ed. Ralph E. Weber and Ralph A. Weber (New York: Broadway Books), 350-351.

the Soviets, which included much overlooked religious and social considerations. It was Massie who suggested the use of “trust, but verify” as an expression that could be effectively used, given the Russians’ proclivity for the use of proverbs in conveying points of discussion. Reagan had adeptly internalized Massie’s advice, employing “trust, but verify” in his discussions with great effect.⁵⁸ Indeed, the term fit exceedingly well with Reagan’s critical requirement for mutual inspection rights during the 1986-1987 negotiation of the Intermediate-Range Nuclear Forces (INF) Treaty. Having evolved into one of Reagan’s signature phrases, “trust, but verify” has since served to underscore the imperative of transparency as an overarching principle of modern security partnerships. The term has been frequently employed and was, in fact, adapted as the official motto of the United States On-Site Inspection Agency (now a component of the United States Defense Threat Reduction Agency), which adorns the entrance wall of its headquarters at Fort Belvoir, Virginia.

It is generally understood that within the context of arms control, verification entails a subscribed process through which a determination is rendered as to whether the military forces or activities of a given party fall within agreed limitations and other obligations. A verifiable legally- or politically-binding mechanism contains what Amy Woolf refers to as “an interlocking web of constraints and provisions designed to deter cheating, to make cheating more complicated and more expensive, or to make its detection more timely.”⁵⁹ That is:

In the past, the United States has deemed treaties to be effectively verifiable if it has confidence that it can detect militarily significant violations in time to

⁵⁸ Suzanne Massie, *Trust, but Verify: Reagan, Russia, and Me* (Blue Hill: Maine Authors Publishing, 2013), 347-348.

⁵⁹ Amy Woolf, “Monitoring and Verification in Arms Control.” *CRS Report for Congress* (Washington: United States Congressional Research Service, 2011), 3.

respond and offset any threat that the violation may create for the United States.⁶⁰

The ability to “respond and offset” provides an important derivative of verification; i.e., the existence of sufficient discouragement to attempt any deviation from agreed limitations and other obligations. While the consequences of a given deviation may fall within the provisions of specific regimes, the broader spectrum of conventional law and international relations should also provide sufficient negative reinforcement so as to ensure both compliance and conformity. The essential precursor to this is, of course, verification. Accordingly, without timely and effective verification and enforcement provisions -- both in design and practical application -- the fundamental integrity of a given regime is significantly undermined, resulting in increased risk to the security of the other parties. This is noted by Robert Axelrod in discussing the “Value of Provocability” in *The Evolution of Cooperation*:

... the only arms control agreements which can be stable are those whose violations can be detected soon enough. The critical requirement is that violations can be detected before they can accumulate to such an extent that the victim’s provocability is no longer enough to prevent the challenger from having an incentive to defect.⁶¹

The 16 Principles of Verification, adopted by the United Nations Disarmament Commission and endorsed annually by General Assembly consensus, espouse that while not an end unto itself, verification -- when properly executed and sustained -- enables the determination of both compliance and conformity, without which regimes cannot effectively function. To wit:

⁶⁰ Amy Woolf, “Monitoring and Verification in Arms Control.” *CRS Report for Congress*, 3.

⁶¹ Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984), 7.

“1. ...verification is an essential element of all arms limitation and disarmament agreements. 3. Verification should promote the implementation of arms limitation and disarmament measures, build confidence among States and ensure that agreements are being observed by all parties. 11. Adequate and effective verification arrangements must be capable of providing, in a timely fashion, clear and convincing evidence of compliance or non-compliance. Continued confirmation of compliance is an essential ingredient to building and maintaining confidence among the parties....”⁶²

Notwithstanding the critical importance of verification, it nevertheless remains a central posit of this paper that *all* components of conventional arms control and CSBM regimes must function unimpeded as mutually-reinforcing and interdependent constituents. In order to attain and sustain this, there must exist what Jeffery McCausland describes as a “harmony of interest among the signatories;” that is, the common determination by states that the security attained within a given regime outweighs the risks assumed in the fulfilment of their individual and collective obligations.⁶³ This common determination may otherwise be described as group consensus or political will. As aptly stated by the former Canadian Secretary of State for External Affairs, Joe Clark, in a 1986 address to the United Nations General Assembly: “Verification is not just a question of technical capacity, but of the political will to reach agreement on the application of technologies and techniques.”⁶⁴

⁶² United Nations, “Verification in all its Aspects, Including the Role of the United Nations in the Field of Verification,” *Disarmament Studies Series* 32 (New York: United Nations Office for Disarmament Affairs, 2008), 25-27.

⁶³ Jeffrey D. McCausland, “Op-Ed: Developing a New Approach to Conventional Arms Control,” *Strategic Studies Institute*, 8 April 2013 (Carlisle: United States Army War College Press, 2013): 2.

⁶⁴ Department of External Affairs. “United Nations Reform – 1986.” *Speech by the Secretary of State for External Affairs, the Right Honourable Joe Clark, to the United Nations General Assembly, New York, September 24, 1986* (Ottawa: Government of Canada Publications, 1986), n.p.

Contemporary Foundations

As previously noted, while its earliest origins can be drawn from ancient history, the advent of contemporary arms control can be more readily traced to the early 19th Century. Major evolutions of the concept unfolded in a manner concomitant with the Industrial Revolution and the rapid advancements made in weapons technology – along with attendant capabilities and shifting strategies of conflict. The *Rush-Bagot Treaty* of 1818, which served to limit naval armaments on the Great Lakes and later establish fully demilitarized boundaries between Canada and the United States, is frequently acknowledged as the first modern arms control regime. The 1899 *Hague Convention* was the first contemporary accord to broadly encompass arms control-related matters within the international community, instituting prohibitions upon the use of certain types of weapons, imposing limitations upon specific types of warfare and addressing associated matters of arbitration. The 1921-1922 Washington Naval Conference advanced this concept by establishing limitations on the international naval arms race of that period. The 1925 *Geneva Protocol*, which inaugurated the concept of proscribed first use of certain weapons in international conflicts (i.e., chemical and bacteriological weapons), remains in effect today.

These arms control milestones were accompanied by the precipitous development of associated precepts and doctrines, which collectively formed the conceptual foundation of an expanding compendium of related treaties, accords, documents, declarations and other mechanisms introduced throughout the latter half of the 20th Century. While conceived to address immediate security imperatives, the number and variety of these regimes also serve as testament to the utility of arms

control as an increasingly pragmatic and effective concept through which to collaboratively manage international security issues generally. In order to fully appreciate the circumstances under which subsequent regimes were envisioned and eventually established (in particular, the three contemporary regimes specifically addressed in this study), it is important to consider the wide-ranging complexities of the global security dynamic and the increasingly adaptive approaches employed by states, alliances and organisations to address individual and collective concerns.

Cold War “Compellence”

Following World War II, developments in conventional arms control closely paralleled remarkable changes in the international security paradigm; itself closely intertwined with the unprecedented advancements and complexities of modern warfare. The core principles of arms control, while fundamentally intact, underwent substantial modification and refinement in order to address the increasingly urgent requirement to stabilise relations between the United States and the Soviet Union as the emergent superpowers, along with their respective security alliances. Varied geopolitical accommodations and technical enhancements were necessary to address not only nuclear weapons as a single, overriding threat, but also the remarkable advancements made in conventional warfare and strategic doctrine in general. Other factors, such as significant upsurges in internal and regional conflicts, along with a rapidly expanding global arms trade, also demanded more effective means of mitigation.

While rarely, if ever, conceptualised as a means unto itself, conventional arms control steadily developed as an increasingly comprehensive function of international

relations, with the state of those relations constituting what might be described as “enabling preconditions.” The specific context of these relations, whether inter-state, bloc-to-bloc, regional or even domestic, shaped and influenced the manner in which arms control agreements were devised and employed as means of collectively safeguarding states’ respective security, sovereignty and other national interests. Certainly, the convulsion of the post-war global security environment demanded a more systematic approach to tempering tensions and raising the threshold of conflict through the moderation of both nuclear and conventional military forces. This included a structured form of “compellence,” a term fashioned by American economist and arms control expert Thomas C. Schelling that describes the means through which states are coerced to actively undertake specific actions or commit to such an undertaking. This term differs from “deterrence,” which entails the use of coercion to discourage states from taking specific actions and is somewhat static in nature.⁶⁵ As an advancement of traditional pacts, alignments and other forms of cooperation, contemporary arms control mechanisms therefore emerged as distinct supplementations of, and even alternatives to, traditional power-based cooperative alliances that were largely deterrent in nature. Over time, they attained increased legitimacy as predominant security and stability frameworks, irrespective of the variances in states’ capacities, orientations or degree of involvement.⁶⁶

Successive advancements and refinements transformed conventional arms control into an increasingly effective means of attaining conformity by not only instituting binding reductions and limitations of armaments, equipment and personnel,

⁶⁵ Thomas C. Schelling, *Arms and Influence* (Fredericksburg: Yale University Press, 1966), 71-72.

⁶⁶ Advisory Council on International Affairs, *Conventional Arms Control: Urgent Need, Limited Opportunities*. Number 2, April 1998 (The Hague: Government of the Netherlands, 1998), 11-14.

but also establishing viable means of oversight and management so as to ensure and maintain the integrity of the behavioural parameters established. As might be expected, these included the institution of overarching principles and standards, technical provisions and rules of procedure, along with formalised channels of consultation and decision-making.

It is evident that global developments leading to the establishment of the principal contemporary regimes, despite their varying degrees of complexity, were uniquely aligned and predisposed to enable significant evolutions in arms control. Dominated by the strategic confrontation between the United States and the Soviet Union throughout the Cold War, the exceptional circumstances leading to the diminishment and ultimate collapse of the Soviet Union from 1989 to 1991 produced a highly altered and in many respects, temporal dimension in international relations and security. That is to say, prevailing conditions sufficiently transfigured the hegemonic enmity that existed between the United States and Soviet Union to not only enable, but compel increased cooperation and more peaceable conduct as “adaptive” means of assured security and stability, despite the persistence of traditional rivalries and established deterrence. Indeed, as noted by the Dutch Advisory Council on International Affairs, these conditions effectively aided the introduction of unprecedented provisions, thereby advancing arms control as an increasingly vital implement of international security and stability:

Arms control is a political concept which raised to fame in the Cold War. Its aim is to achieve security and stability by encouraging states voluntarily to sign agreements on levels of armament, on the deployment, production, supply and use of arms, and also on the monitoring of enforcement procedures (i.e. verification). Arms control has traditionally focused primarily on levels of

nuclear armament, in the United States and the former Soviet Union in particular, and it is this image which has helped to breed the misconception that arms control is simply a question of counting numbers of weapons. Whilst a quantitative perspective may undoubtedly play a role in arms control, there is also room for a qualitative perspective, based on the aim of deploying arms in such a way as to minimise the risk of a military surprise attack. In both cases, the principal objective is to achieve security and stability.⁶⁷

This characterisation is noteworthy in its recognition of the quantitative aspects of arms control being further enhanced by qualitative ones in the attainment of overarching strategic security imperatives. In the simplest of terms, both quantitative and qualitative provisions have demonstrated themselves to be collectively effective in reducing the risk of conventional military escalation that could ultimately lead to nuclear conflict. Indeed, these combined provisions served to reinforce the trust and confidence that were emerging from the rapprochement between the United States and Soviet Union. Throughout the transition from the Cold War to the post-Cold War security environment, conventional arms control mechanisms served to not only establish broad weapon and equipment system ceilings, but also improve upon these limitations with expanded categorizations, along with systematic controls on deployments, exercises and other military activities. At the same time, complementary reporting, monitoring and verification measures (including concomitant national technical means) were introduced as viable capabilities to assure compliance and conformity, while concurrently employing broad collaborative measures to build confidence, security and long-term peaceful cooperation.

⁶⁷ Advisory Council on International Affairs, *Conventional Arms Control: Urgent Need, Limited Opportunities*, 7.

As explained by the Secretary General of the OSCE, Lamberto Zannier, conventional arms control was logically embraced within the broader early warning, conflict prevention, crisis management and post-conflict rehabilitation responsibilities discharged by the OSCE in its mandated oversight of its politico-military, economic/environmental and human security “dimensions.” Essential functions that rendered conventional arms control a suitable “fit” within the OSCE security framework included: the establishment and maintenance of weapon/equipment system and personnel ceilings; limitations of specific military activities, exchange of specified military information; and the employment of verification as the principal means of ensuring compliance and conformity, thereby serving to sustain and preserve the integrity of the established regimes.⁶⁸

Dialogue, Negotiations and Incremental Progress

The inimitable circumstances leading to the establishment of the leading contemporary conventional arms control regimes are directly reflected in the character and iterative nature of the varied consultations and negotiations that began in the 1970s and that continue, in several respects, to this day. While not singularly accountable for the manner in which this dialogue unfolded, the 1970 NATO Rome Ministerial nevertheless constitutes a notable juncture in both its appraisal and determinations concerning European security at that time and as such, provides a useful datum. Having taken stock of previous consultations and analogous developments in nuclear proliferation security, the Rome Ministerial was remarkable in its appraisal of the prevalent circumstances and resultant opportunities that presented themselves as means

⁶⁸ Lamberto Zannier, interview with the author, OSCE Headquarters, Vienna, 26 June 2014.

of advancing East-West détente. The Ministerial further served to solidify NATO's approach to the manner in which dialogue with the Soviet Union and Warsaw Treaty Organisation (WTO)⁶⁹ would be pursued. This entailed the affirmation of NATO members' commitment to sustaining their conventional forces in Europe, while at the same time remaining open to principled discussions concerning reductions. It was also during this time that refinements to NATO's general concept of military force reductions were formally articulated. This included the view that "balanced" reductions would include both "stationed and indigenous" military forces. Moreover, the Ministerial laid down a key "marker" that any conventional force reductions by NATO members would necessarily be based upon reciprocity with those of the WTO.⁷⁰

The Rome Ministerial's key outcomes were its *Declaration on Mutual and Balanced Force Reductions* (MBFR), and *Final Communiqué*. These outcomes were indeed noteworthy, as they not only served as a renewed basis for East-West dialogue on European Security but, given the range of other strategic security consultations, they also enabled a suitably-oriented "dual-track" approach. This approach was aimed at addressing both the immediate imperative of military force reductions, while concurrently engaging broader security, human rights and economic concerns. First, the Declaration formally conveyed to the Soviet Union and WTO a viable preliminary basis for appositely-focused discourse, with specific consideration accorded to principled fundamental elements that would not only permit "substantive negotiations," but also legitimise some of the core principles of conventional arms control; i.e.:

⁶⁹ Also commonly known as the Warsaw Pact.

⁷⁰ Department of State, *MBFR and the Conference on European Security, December 1970 - December 1971* (Washington: United States Government Printing Office, 1986), 107-108.

- Mutual force reductions should be compatible with NATO's vital security interests and should not operate to the military disadvantage of either side having regard for the differences arising from geographical and other considerations;
- Reductions should be on a basis of reciprocity and phased/balanced as to their scope and timing;
- Reductions should include stationed and indigenous forces and their weapons systems in the area concerned; and
- There must be adequate verification and controls to ensure the observance of agreements on mutual and balanced force reductions.⁷¹

Second, the *Final Communiqué* clearly signalled NATO's willingness to engage within "any suitable forum," broader issues associated with European security, noting that they were "deeply rooted in the conflicting perceptions of state interests." Further, such engagement would indeed require "full and timely consultation," "patient endeavour," and constitute a "test of the willingness of all interested countries to deal meaningfully with real issues of security."⁷²

Taking into account the various bilateral and multilateral consultations, contacts and negotiations that had been taking place, NATO Ministers agreed to continue and intensify this effort, with a view to progressing towards more focused discussion concerning security and cooperation in Europe. While acknowledging favourable developments, such as recent "four powers" (France, United Kingdom, United States and Soviet Union) discussions on the status of Berlin and Germany, United States -

⁷¹ North Atlantic Council, *Declaration on Mutual and Balanced Force Reductions*, 26-27 May 1970 (Rome: North Atlantic Treaty Organisation, 1970), n.p.

⁷² North Atlantic Council, *Final Communiqué*, 26-27 May 1970 (Rome: North Atlantic Treaty Organisation, 1970), n.p.

Soviet discussions on strategic arms limitations and the entry-into-force of the 1968 *Treaty on the Non-Proliferation of Nuclear Weapons*, the *Final Communiqué* nevertheless noted the lack of a Soviet response to overtures made in previous NATO ministerial declarations (i.e., at Reykjavik in 1968 and at Brussels in 1969). Recalling the Alliance's *Report on the Procedures for Negotiation*, the *Final Communiqué* specified that one of the main objectives of "intensified dialogue" would be to consider at what point it would be possible to convene a conference (or series thereof) concerning European security and cooperation. This included the possibility of the establishment of a permanent body through which to so engage.⁷³

The Rome Ministerial *Final Communiqué* therefore formally recognized both the exceptional circumstances and the unique opportunity that now presented itself to progress détente. This included, most significantly, growing indications from the Soviet Union and other Eastern European States (i.e., through varied bilateral and multilateral contacts, discussions or negotiations)⁷⁴ of a willingness to engage in not only "single issue" and bilateral discourse, but also in dedicated interaction aimed at reducing tensions and promoting cooperation generally:

This period had... seen an acceleration of the process of change in Europe which sharpened the USSR's interest in establishing a more active role in West European politics and seemed to improve Moscow's chances of gaining wider access to Western Europe's economic and technical resources. Moscow therefore wanted a security conference more than ever, and by continuing to hold out against MBFR it would have hurt its chances of obtaining one.⁷⁵

⁷³ North Atlantic Council, *Final Communiqué*, 26-27 May 1970, n.p.

⁷⁴ Ibid, n.p.

⁷⁵ Central Intelligence Agency, *National Intelligence Estimate. The Soviet Approach to Force Reductions in Europe* (SECRET/SENSITIVE Released as Sanitized) (Washington: Central Intelligence Agency, 1973), 4.

In addition to supporting the imperative for MBFR, the *Final Communiqué* served to reinforce broader fundamental principles of regional and proliferation security that would be eventually adapted and refined within the subsequent Helsinki Process and Helsinki Final Act, as negotiated within a dedicated Conference on Security and Cooperation in Europe (CSCE). These included:

4. ...[that] peace must rest upon universal respect of the sovereign equality, political independence and territorial integrity of each European State, regardless of its political or social system, and for the right of its peoples to shape their own destinies, free of the threat of external intervention, coercion or constraint;

16. a. ...the principles which should govern relations between states, including the renunciation of force; and

16. b. ...the development of international relations with a view to contributing to the freer movement of people, ideas and information and to developing co-operation in the cultural, economic, technical and scientific fields as well as in the field of human environment.⁷⁶

The “dual-track” approach to East-West security dialogue resulting from the Rome Ministerial unfolded from 1973 and continued into the early 1990s.

Notwithstanding preceding events, including a 1972 United States – Soviet agreement to hold parallel military and political talks, the resultant consultations were:

- MBFR talks and subsequent negotiations, ultimately leading to the establishment of the CFE Treaty; and
- The Helsinki process, resulting in the establishment of the Vienna Document.

⁷⁶ North Atlantic Council, *Final Communiqué*, 26-27 May 1970, n.p.

While the MBFR dialogue and Helsinki process are discussed and referred to in subsequent chapters, it is important to provide a broad overview of their respective progression, interaction and association with other events. This is necessary in order to reinforce the unique circumstances and conditions during this period, which ultimately enabled the establishment of the major conventional arms control regimes.

MBFR: Towards a CFE Treaty

Michael D. Miggins, former Head of the Arms Control and Coordination Section, Political Affairs and Security Policy Division, NATO, referred to the MBFR (1973-1989) as possibly “the most successful arms control negotiation ever conducted.”⁷⁷ The arduous MBFR consultations and negotiations comprised an extensive series of proposals, counter-proposals and counter-counter-proposals discussed over the course of 16 years. Stressing the significance of aforementioned “enabling conditions,” and as acknowledged in several sources, it is indeed worthy to note the effect of both integral and external, “real world” developments upon the MBFR process. These are quite varied, but include such events as NATO’s planned deployment of intermediate-range nuclear weapons in Europe, the United States Strategic Defense Initiative (SDI), the signing of the *Intermediate Nuclear Forces Agreement* in 1987, on-going *Strategic Arms Reduction Treaty* (START) negotiations and, more specifically, iterative proposals by the Soviet Union to include nuclear and conventional land and air forces, as well as zonal (i.e., Atlantic to the Urals or “ATTU”) area parameters within the MBFR consultative framework. These proposals -- to be

⁷⁷ Michael D. Miggins, *Conventional Arms Control and Its Contribution to European Security and Stability*, “Briefing to NATO Senior Officer Course 10 February 2005 (Brussels: North Atlantic Treaty Organisation, 2005), 8.

followed by additional propositions and compelling actions -- were duly addressed in NATO's *Halifax Statement on Conventional Arms Control* (1986), the *Brussels Declaration on Conventional Arms Control* (1986) and in subsequent communications.⁷⁸

In response to the Halifax Statement, the Soviet/Warsaw Pact proposals of 1986 (frequently referred to as the "Budapest Appeal") were highly significant, in that they represented an entirely new approach in which Moscow was now assuming much of the initiative, including its willingness to expand MBFR dialogue beyond NATO and the Warsaw Pact, to include other European states. Even more unforeseen were Soviet announcements of both unilateral national troop reductions and military force withdrawals from Eastern Europe.⁷⁹ It was during this period that a range of critical factors (including domestic pressures relating to overwhelming military spending and other imperatives associated with the security and economic objectives of détente) had compelled the Soviets to energetically advance these proposals. Together with NATO's largely constructive responses, East-West dialogue had reached a defining moment.

Fen Osler Hampson notes:

The general feeling at the time was that the initiative was more than just propaganda, reflecting the Soviet need for "significant savings in defense expenditures" and the recognition that these savings could "be best made in conventional forces." Related to this argument was the view "that the restructuring of the Soviet economic system [required] another phase of détente...."⁸⁰

⁷⁸ Rudulf Th. Jurrjens, and Jan Sizoo, *Efficacy and Efficiency in Multilateral Policy Formation. The Experience of Three Arms Control Negotiations: Geneva, Stockholm, Vienna* (The Hague: Kluwer Law International, 1997), 170-172.

⁷⁹ Richard A. Falkenrath, *Shaping Europe's Military Order. The Origins and Consequences of the CFE Treaty* (Cambridge: MIT Press, 1995), 24-31.

⁸⁰ Fen Osler Hampson, *Multilateral Negotiations: Lessons from Arms Control, Trade and the Environment* (Baltimore: Johns Hopkins University Press, 1995), 98.

During this momentous period of rapprochement, which culminated in the historic summit meeting between United States President Ronald Reagan and Soviet Secretary General Gorbachev in Reykjavik in 1986, it had become increasingly evident that while inexorably linked, nuclear and conventional arms each required their own suitably focused consultations so as to ensure commensurable reductions in both. Indeed, within NATO, there existed a specific concern that, unless corresponding cuts in conventional weapons could be achieved, nuclear force reductions would place Western Europe at particular risk to the numerically superior WTO. This imperative was clearly asserted in the 1986 Brussels Declaration:

3. While maintaining effective deterrence involving both nuclear and conventional forces, we seek to establish a stable relationship of conventional forces in Europe. Reductions in nuclear weapons which are the subject of discussions between the US and the USSR in Geneva would increase the importance of eliminating conventional disparities.⁸¹

As noted by Dieter Mahncke, the Brussels Declaration provided “remarkably clear language” in conveying a principled response to Soviet proposals, including a necessary refutation of the equal numerical reductions proposed by Moscow, given the significant European conventional force imbalances that already existed in favour of the WTO.⁸² In addition to the “elimination of disparities,” the Declaration further communicated the requirement to discuss other prevailing factors, including specific armaments, military force levels, mobility, deployments and readiness, along with

⁸¹ North Atlantic Council, *Brussels Declaration on Conventional Arms Control, 11 December 1986* (Rome: North Atlantic Treaty Organisation, 1986), n.p.

⁸² Dieter Mahncke, “Security and arms control in Europe: a German Perspective,” in *East-West Arms Control: Challenges for the Western Alliance*, ed. David Dewitt and Hans Rattinger (New York: Routledge, 1992), 61-62.

“considerations of geography.”⁸³ Moreover, the Declaration effectively advanced the principles espoused in the Rome Ministerial *Final Communiqué* as stated objectives, including:

... ‘the establishment of a stable and secure level of forces, geared to the elimination of disparities,’ a step-by-step negotiating process focusing on ‘the elimination of the capability for surprise attack or for the initiation of large scale offensive action,’ the redressing of regional imbalances, as well as more openness, calculability and an effective verification regime.⁸⁴

Accordingly, the Brussels Declaration signified the transition from the on-going MBFR talks to more suitably oriented dialogue focusing upon specified imperatives, including the call for “a new mandate for negotiating on conventional arms control covering the whole of Europe from the Atlantic to the Urals.”⁸⁵

In February 1987, the Conventional Stability Talks (also referred to as the Conventional Mandate Talks) between NATO and the WTO commenced as a derivative of the MBFR process. Over the course of nearly two years, both sides worked out the details of a mandate, resulting in the January 1989 transition to the Negotiations on Conventional Armed Forces in Europe, which were conducted within the framework of the CSCE. With this transition, the MBFR process ended, with no concluding agreement having been reached.⁸⁶

⁸³ North Atlantic Council, *Brussels Declaration on Conventional Arms Control, 11 December 1986*, n.p.

⁸⁴ *Ibid*, n.p.

⁸⁵ *Ibid*, n.p.

⁸⁶ Rudulf Th. Jurrjens, and Jan Sizoo, *Efficacy and Efficiency in Multilateral Policy Formation. The Experience of Three Arms Control Negotiations: Geneva, Stockholm, Vienna*, 171.

With its mandate now established, formal CFE negotiations commenced on 9 March 1989 in Vienna. Despite the great complexity of these consultations, progress was rapidly made, with NATO's broad acceptance of a number of Soviet weapon system reduction proposals, further complemented by the Soviets' acceptance of NATO proposals in stationed personnel reductions. Negotiations were subsequently impacted by the rapidly unfolding events in the Soviet Union and its satellites, leading to the eventual dismantling of the entire Soviet political apparatus. Nevertheless, these developments had provided even greater imperative for Moscow to secure acceptable force reduction levels not only with NATO, but also with its WTO partners within the negotiated Soviet total. It is evident that this had become a matter of urgent security and political survival for Moscow, given the impending "collapse" of Communist rule in Eastern Europe and the effective "disintegration" of Soviet control within its periphery.⁸⁷

Ultimately, negotiations were successful, with the CFE Treaty signed on 19 November 1990. This was followed shortly thereafter by negotiations to set military personnel limits within the CFE Treaty's Area of Application. The resultant *Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe*, or CFE-1A, established a political commitment to maintain verifiable military personnel levels within established limits and to provide notification of changes in these levels. Following ratification, both the CFE Treaty and CFE 1A entered-into-force on 17 July 1992.⁸⁸

⁸⁷ James P. Nichol and Thomas Skallerup, "Historical Setting: 1917-1991," in *Russia: A Country Study*, ed. Glen E. Curtis (Washington: Library of Congress, 1996), 103.

⁸⁸ Conference on Security and Cooperation in Europe, *Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe (CFE 1A)* (Helsinki: Conference on Security and Cooperation in Europe, 1992), 3-15.

Subsequent evolutions of the CFE Treaty, including its series of quinquennial and extraordinary review conferences, the 1990 Adapted CFE Treaty Agreement, along with key events associated with the Agreement, will be discussed in detail later in the thesis.

Helsinki and the Path to the Vienna Document

The Helsinki process, undertaken in parallel with the MBFR consultations, was in several respects the long-term outcome of an initial proposal by the Soviet Union in the 1950s for the establishment of a European-specific consultative mechanism for security and cooperation. This early proposal had not been particularly well received by the West, given the assessed Soviet objective to solidify European boundaries established following World War II as means of consolidating power, countering American influence and further enabling the expansion of communism. It also sought to legitimise East Germany and other Soviet regimes as the political status quo, dissuade Western European states (in particular, West Germany) from seeking NATO membership and otherwise expand Soviet pan-European influence.⁸⁹ As such, little Western support existed for such a contrivance until the WTO submitted a revised proposal under its 1969 Budapest Declaration.⁹⁰ As noted by Daniel James Thomas, by that time, changes in prevailing geostrategic conditions (which included the attainment of East-West nuclear parity, the entrenchment of Soviet hegemony following the invasion of Czechoslovakia, and Eastern economic stagnation) had provided Moscow

⁸⁹ Douglas Selvage, "The Warsaw Pact and the European security conference. 1964-69; sovereignty, hegemony, and the German question," in *Origins of the European Security System: The Helsinki Process Revisited: 1965-1975*, ed. Andreas Wenger, *et al* (Milton Park: Routledge, 2008), 91-94.

⁹⁰ Christian Nuenlist, "Expanding the East-West dialogue beyond the bloc division. The Neutrals as negotiators and mediators, 1969-1975." In *Origins of the European Security System. The Helsinki Process Revisited, 1965-1975*, ed. Andreas Wenger, Vojtech Mastny and Christian Nuenlist (Milton Park: Routledge, 2008), 202.

and in particular, the Soviet republics, greater incentive to seek closer pan-European relations. Moscow had long sought Western recognition of the “legitimacy” of the Soviet bloc and earlier efforts aimed at undermining Western Europe’s alignment with the United States’ position on this matter had failed. Accordingly, a cooperative consultative apparatus came to be regarded as the means through which Moscow could progress its legitimisation and better influence European affairs generally. The governments of Soviet bloc countries were motivated by the opportunity to reduce their dependency upon Moscow by gaining access to Western markets and investment, which were largely out of reach without some means of rapprochement.⁹¹

These broad circumstances therefore presented the Soviet bloc with suitable enticements for expanded dialogue. They also afforded Moscow with favourable conditions under which détente could be employed to advance its strategic agenda, as envisioned by Soviet leader Leonid Brezhnev:

Leonid Brezhnev himself believed that détente suited the ideological purposes of the Soviet Union.... Once the invasion of Czechoslovakia and the consolidation of Soviet hegemony in Eastern Europe was complete, Moscow was ready to offer new terms for the security conference it had so long desired.⁹²

Although neutral, Finland had nevertheless maintained close relations with Moscow and as such, was able to serve as an impartial interlocutor in this endeavour. By May 1969, following preliminary discussions, sufficient momentum had been attained for the government of Finland to invite European countries, along with the

⁹¹ Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*. (Princeton: Princeton University Press, 2001), 34-35.

⁹² Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*, 34-35.

United States and Canada, to Helsinki for dedicated consultations on security and cooperation.⁹³ By November 1972, the resultant Helsinki Consultations were underway, with representatives from 35 states undertaking the far-reaching negotiations necessary to “hammer out” the arrangements for a formalised conference framework.⁹⁴ The opportunity presented by these events also brought with them a range of issues for the United States, in that the broad nature of the proposed consultations would have less focus, predictability and perhaps more importantly, less direct influence than existed in established bilateral dialogue.⁹⁵ There were also specific concerns that security and cooperation discussions of this nature might distract or even impede on-going strategic security negotiations with Moscow.⁹⁶ Within NATO, there was also a divergence of views and varying degrees of support for such discourse with the Soviets.⁹⁷ Similar variances also existed amongst neutral and non-aligned European states, over which the United States held less sway.⁹⁸

As then-United States National Security Advisor Henry Kissinger noted: “a conference would probably find the East European countries closely aligned with a rigid Soviet position, while the Western participants would be competing with each other to find ways to ‘break the deadlock.’”⁹⁹ Particularly worrisome for the United States was that any formal acknowledgement of the Eastern European status quo (i.e., Soviet territorial entrenchment, including the absorption of the Baltic States) would constitute

⁹³ Christian Nuenlist, “Expanding the East-West dialogue beyond the bloc division. The Neutrals as negotiators and mediators, 1969-1975,” 202.

⁹⁴ Arie Bloed, ed, *From Helsinki to Vienna: Basic Documents of the Helsinki Process Volume 2* (AH Dordrecht: Kluwer Academic Publishers Group, 1990), 3.

⁹⁵ Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*, 37.

⁹⁶ Patrick G. Vaughn, “Zbigniew Brzezinski and the Helsinki Final Act,” in *The Crisis of Détente in Europe: From Helsinki to Gorbachev, 1975-1985*, ed. Leopoldo Nuti (Abingdon: Routledge, 2009), 12.

⁹⁷ *Ibid*, 36-37.

⁹⁸ Christian Nuenlist, “Expanding the East-West dialogue beyond the bloc division. The Neutrals as negotiators and mediators, 1969-1975,” 201-202.

⁹⁹ Henry Kissinger, *The White House Years* (Boston: Little, Brown, 1979), 415.

an insupportable concession to Moscow. Nevertheless, bending somewhat to its allies and other European partners, the United States ultimately conceded to participating in what would become the CSCE. With the support and reassurances of Western European states,¹⁰⁰ Washington rationalised the consultations as presenting limited risk, while outwardly maintaining that its existing position(s) could be maintained in what could otherwise serve as a worthwhile, albeit adjacent approach to progressing the European security agenda.^{101 102}

These developments notwithstanding, as late as 1974, Kissinger (now United States Secretary of State) largely deprecated the Helsinki process as a “meaningless process” and a “grandstand play to the left” that the Americans “went along with” at the behest of European states that were seeking a more pluralistic, broad-based form of dialogue.¹⁰³ Indeed, many European Community states viewed the Helsinki Process as a rare opportunity to engage in a dedicated discourse through which to lower barriers, while also serving to assert Western beliefs across a broader range of issues.¹⁰⁴ Accordingly, the talks were promoted by Washington’s allies and partners as worthwhile in not only improving relations on a practical level, but (given that the Soviets had first proposed such dialogue) also demonstrating the superiority of Western ideology in negotiating practical measures, to include such aspects as fundamental human rights.¹⁰⁵

¹⁰⁰ Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*, 37.

¹⁰¹ Christian Nuenlist, “Expanding the East-West dialogue beyond the bloc division. The Neutrals as negotiators and mediators, 1969-1975,” 203.

¹⁰² National Security Council, *Statement - President Ford – Eastern European Advocates Memorandum of Conversation (July 25, 1975)* (Washington: National Archives and Records Administration, 1975), n.p.

¹⁰³ National Security Advisor, *President Ford – Henry Kissinger Memorandum of Conversation (August 15, 1974)* (Washington: National Archives and Records Administration, 1974), 5.

¹⁰⁴ Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*, 30, 43.

¹⁰⁵ *Ibid*, 39-46.

By 1975, with the process nearly completed, President Gerald Ford responded to domestic criticism by emphasising that American acquiescence to Helsinki had not obliged the United States to anything more than to which it was already committed. He further stressed that while the Helsinki process included “some military understandings such as advance notice of manoeuvres,” they were not to be confused with on-going Strategic Arms Limitations Talks (SALT) or MBFR negotiations. In allaying the concerns of Americans of Eastern-European descent, he stated: “the Helsinki summit is linked with our overall policy of working to reduce East-West tensions and pursuing peace, but it is a much more general and modest undertaking.”¹⁰⁶

Irrespective of Ford’s and Kissinger’s characterisations, the Helsinki process rapidly developed into a comprehensive and energised consultative mechanism, through which a broad range of compromises and concessions by both sides were merged into a resultant framework.¹⁰⁷ These included Soviet acquiescence to the full participation of both the United States and Canada in the consultations in exchange for securing other European states’ participation, along with increased “military-specific” dialogue. While Moscow had been more interested in economic cooperation, Washington and NATO had grudgingly sought a military consultative element in order to ensure a measure of equilibrium, while still recognizing the requirement to maintain due focus within the more explicit MBFR consultations.¹⁰⁸ However, the roles played by Yugoslavia (of the Neutral and Non-aligned Group), and France in advancing the concept of “confidence-building measures” had proven highly significant:

¹⁰⁶ National Security Council, *Statement - President Ford – Eastern European Advocates Memorandum of Conversation (July 25, 1975)*, n.p.

¹⁰⁷ John Fry, *The Helsinki Process. Negotiating Security and Cooperation in Europe* (Washington: National Defense University Press, 1993), 139-141.

¹⁰⁸ James Macintosh Dewitt, “Confidence building processes – CSCE and MBFR: a review and assessment,” in *East-West Arms Control: Challenges for the Western Alliance*, ed. David Dewitt and Hans Rattinger (New York: Routledge, 1992), 138-139.

Of special relevance for national security concerns was the creation of a very modest collection of confidence-building measures. ...Helsinki CBMs established an important procedural precedent and fostered a modest but enduring (primarily European) interest in developing a much more elaborate collection of second generation CBMs called confidence- and security-building measures or CSBMs.¹⁰⁹

Accordingly, the military dynamic addressed within the Helsinki process, while initially met with less than unbridled enthusiasm by the major participants, would prove itself an element of compromise that would later have a far more significant outcome as one of the principle areas of multilateral dialogue; namely, security; economics, science, technology and the environment; and humanitarian and cultural concerns.¹¹⁰

In August 1975, the *Conference on Security and Co-operation Final Act* (Helsinki Final Act) was signed in Helsinki by the leaders of 33 European states (that is, all European states less Albania, which had refused to participate because of the Soviet Union - United States orientation of the process),¹¹¹ the United States and Canada. The complexity and degree of effort associated with this agreement cannot be overstated. Indeed, the details of the Final Act itself best serve to underscore the rare opportunity presented by the circumstances of that time in enabling agreement to such a comprehensive framework of security and cooperative measures.

¹⁰⁹ James Macintosh Dewitt, "Confidence building processes – CSCE and MBFR: a review and assessment," 139.

¹¹⁰ Commission on Security and Cooperation in Europe, "Origin of the Helsinki Accords." *Organization for Security and Cooperation in Europe*, [Journal-on-Line]; available from: <http://csce.gov/index.cfm?FuseAction=AboutHelsinkiProcess.OSCE>; Internet; accessed 8 September 2014, n.p.

¹¹¹ Library of Congress, "Shifting Alliances," *Country Studies* [journal-on-line]; available from: <http://countrystudies.us/albania/144.htm>; Internet; accessed 24 July 2015, n.p.

As noted by the Historian of the United States Department of State, despite continued opposition to what was viewed as the West's concession on established territorial boundaries (that is, the Soviet annexation of Estonia, Latvia and Lithuania), other political and social provisions, including those pertaining to human rights and freedoms, served to offset Soviet territorial and political entrenchment. Indeed, the monitoring and reporting processes established under the Final Act ensured specific oversight and accountability concerning violations of this nature.¹¹² In addition, following interventions made by Canada, Ireland, Spain and other states, the language of the Final Act's *Declaration on Principles Guiding Relations between Participating States*, was modified to state: "frontiers can be changed, in accordance with international law, by peaceful means and by agreement."¹¹³ This was in addition to the provision concerning a state's "rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence."¹¹⁴ The United States also took the opportunity to specifically reaffirm its extant non-recognition of the annexation of the Baltic States within the Soviet Union.¹¹⁵

The Helsinki Final Act is a politically-binding agreement, containing a range of measures oriented upon three general areas of cooperation -- commonly referred to as "baskets" -- designed to enhance security and cooperation throughout the area associated with the territories of its participating States. The first "basket" addresses

¹¹² Department of State, "Milestones: 1969-1976. Helsinki Final Act, 1975," *Office of the Historian*, [journal-on-line]; available from: <https://history.state.gov/milestones/1969-1976/helsinki>; Internet; accessed 8 September 2014, n.p.

¹¹³ Conference on Security and Cooperation in Europe, *Final Act*, (Helsinki: Conference on Security and Cooperation in Europe, 1975), 4.

¹¹⁴ Conference on Security and Cooperation in Europe, *Final Act*, 4.

¹¹⁵ Konstantin R. Khudoley, "Soviet foreign policy during the Cold War: the Baltic factor" in *The Baltic Question During the Cold War*, ed. John Hiden, *et al* (Abingdon: Routledge, 2008), 65.

political and military issues and is premised upon the *Declaration on Principles Guiding Relations between Participating States*, also known as the “Decalogue,” which declares the commitment of each participating State to “respect and put into practice” the following ten principles in guiding mutual relations:

- Sovereign equality and respect for the rights inherent in sovereignty;
- Refraining from the threat or use of force;
- Inviolability of frontiers;
- Territorial integrity of states;
- Peaceful settlement of disputes;
- Non-intervention in internal affairs;
- Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief;
- Equal rights and self-determination of peoples;
- Cooperation amongst states; and
- Fulfilment in good faith of obligations under international law;¹¹⁶

These principles are reinforced through the implementation of CSBM, as specified under the “Document on confidence-building measures and certain aspects of security and disarmament.”¹¹⁷

The second “basket” addresses trade and other economic issues, along with scientific, technological, environmental and labour cooperation. The third “basket”

¹¹⁶ Conference on Security and Cooperation in Europe, *Final Act*, 3-8.

¹¹⁷ *Ibid*, 10-13.

addresses human rights, including freedom of mobility, family reunification, emigration cultural/education exchanges and freedom of the press. The remainder of the Final Act provides particulars concerning further consultations and implementation procedures.¹¹⁸

Building upon the “baskets” established under the Final Act, a series of key CSCE consultations ensued, including those held in Belgrade in (1977 - 1978), Madrid (1980 - 1983), Ottawa (1985), Stockholm (1986), and Vienna (1986 - 1989). It is important to note that the specific nature and direction of these consultations were closely interconnected with and further impelled by external factors, most significant of which concerned the momentous chain of events ultimately leading to the dissolution of the Soviet Union. Indeed, a general breakdown of détente in the late 1970s -- interspersed with competing United States-Soviet regional interests, the Soviet invasion of Afghanistan and setbacks leading to the non-ratification of the Strategic Arms Limitation Treaty II -- had slowed progress in on-going security consultations.¹¹⁹ It was only with the ascendancy of Mikhail Gorbachev as General Secretary of the Communist Party of the Soviet Union in 1985 and as President in 1991 that the conventional arms control and regional security agendas picked up again. Indeed, the overall process was reinvigorated not only due to Gorbachev’s “new political thinking,” but more specifically, his attempts to decentralise and democratize the Soviet Union, ultimately resulting in its collapse in 1991 and along with it, Moscow’s post-war domination of Eastern Europe.¹²⁰

¹¹⁸ Commission Security and Cooperation in Europe, “Origin of the Helsinki Accords,” n.p.

¹¹⁹ Thomas Crump, *Brezhnev and the Decline of the Soviet Union* (Milton Park: Routledge, 2014), 154.

¹²⁰ Coit D. Blacker, *Hostage to Revolution: Gorbachev and Soviet Security Policy, 1985-1991* (New York: Council on Foreign Relations, 1993), 184-189.

The culmination of the CSCE consultations was the *Concluding Document of the Vienna Meeting of the Conference on Security and Cooperation in Europe* (1989), modestly described by Arie Bloed as a “major step forward in the Helsinki process.”¹²¹ Embodying the key components of the Helsinki Final Act and incorporating CSBMs as separately agreed in Stockholm in 1986, the Concluding Document constitutes the basis of the 1990 *Vienna Document on Confidence- and Security-Building Measures* and its successive 1992, 1994, 1999 and 2011 iterations. Further, the Concluding Document incorporated the mandate and all “organisational and procedural modalities” for the CSCE, thereby institutionalising it. Lastly, the Final Act established the mandate for the Negotiation on Conventional Armed Forces in Europe.¹²²

Thus, the Helsinki Process and CSCE consultations not only established the Vienna Document, they also enabled the CSCE’s transformation to that of a permanent establishment in 1995: the Organization for Security and Cooperation in Europe (OSCE). Further expounded and formalized through the *Charter of Paris for a New Europe* (1990), the *CSCE Helsinki Document* (1992) and the Budapest Summit (1994), the new OSCE was accorded its formal (but not legal) status, along with a headquarters in Vienna, a Secretariat, Conflict Prevention Centre, Parliamentary Assembly, Senior Council and other constituent parts. Additional components would be added with the establishment of corresponding treaties, accords and tasks, as overseen by the new organisation.

¹²¹ Arie Bloed, ed., *From Helsinki to Vienna: Basic Documents of the Helsinki Process Volume 2* (AH Dordrecht: Kluwer Academic Publishers Group, 1990), 23.

¹²² Arie Bloed, ed., *From Helsinki to Vienna: Basic Documents of the Helsinki Process Volume 2*, 23.



Figure 2.3: OSCE Permanent Council Meeting, Hofburg Palace, Vienna¹²³

At this juncture, it is worth noting the politically-binding status of the Vienna Document regime. That is to say, while not legally obliged, as is the case with States Parties of the CFE and Open Skies Treaties, the participating States of the Vienna Document are nevertheless committed to conform with its provisions with respect to their individual and collective compliance, modification, or withdrawal. Therefore, while not subject to international law per se, the non-compliance, non-conformity or other contravention of a participating State nevertheless remains subject to an appropriate political response.¹²⁴ This is reflected in the status of the OSCE itself, whereby membership constitutes a political commitment, which is considered to enable greater flexibility in the oversight and execution of security cooperation throughout the “OSCE area” (i.e., the territories of its participating States). As will be discussed, the OSCE’s lack of legal status has, in many respects, limited its international authority, along with the protection of its field operations -- particularly in conflict and other high-

¹²³ Organisation for Security and Cooperation in Europe photo.

¹²⁴ Dalton, Robert E. *International Documents of a Non-Legally Binding Character*, United States State Department Memorandum (Washington: United States Government Printing Office, 1984), 4-5.

risk areas. It also necessitates the negotiation of separate collaborative arrangements with individual participating States, precluding a “uniform operating environment.”¹²⁵

The Innovation of Open Skies

While interrelated with parallel developments in contemporary conventional arms control, the Open Skies Treaty can specifically trace its beginnings to the July 1955 Geneva Summit. There, the leaders of the principal post-war powers (namely, Prime Minister Edgar of France; Premier Nikolai A. Bulganin of the Soviet Union; Prime Minister Anthony Eden of the United Kingdom; and President Dwight D. Eisenhower of the United States) had gathered to discuss matters pertaining to global security as a response to the rising tensions that had developed over the decade following the end of World War II. Discussions were broad in nature; including security, disarmament, trade, German reunification, and various other approaches to improving the overall relationship between East and West.¹²⁶

The Summit was a significant step in initiating direct security consultations and breaking down some of the impediments to relations amongst the powers, including those resulting from the lack of regular consultative contact. As noted by Saki Dockrill and Gunter Bischof, it also provided a means through which to introduce new thinking in progressing both peaceful coexistence and collaboration, including the concept of free trade. Indeed, the Soviet leadership had advocated a new system of collective

¹²⁵ Brander, Sonia. “Making a credible case for a legal personality for the OSCE,” *OSCE Magazine March – April 2009* (Vienna: OSCE Secretariat, 2009): 18-22.

¹²⁶ Saki Dockrill and Gunter Bischof, “Introduction. Geneva: The Fleeting Opportunity for Détente,” in *Cold War Respite: The Geneva Summit of 1955*, ed. Gunter Bischof and Saki Dockrill, (Baton Rouge: Louisiana State University Press, 2000), 3.

security that included the dismantling of NATO and the perpetual neutrality of Germany and other European states, as had been demonstrated by its agreement to re-establish Austria as an independent state in 1955.¹²⁷ Nevertheless, West Germany's entry into NATO and Moscow's response in creating the Warsaw Pact had aptly demonstrated that considerable challenges existed in building trust and confidence. The positive ambiance of the Summit and the general receptiveness of all parties to discussion (often referred to as the "spirit of Geneva"), therefore served to reduce tensions and promote goodwill, despite not having secured any specific agreement on arms control or other major international issues.¹²⁸

A key issue in attaining agreement on security pertained to the concept of "mutual inspection" as a precept of arms control and in particular, reductions and controls of respective nuclear stockpiles. Given the varied issues associated with inspections as means of confirmation/validation, President Eisenhower proposed an "open skies" concept, which would permit states to conduct aerial observation flights as means of facilitating the active monitoring necessary to verify and validate exchanged information concerning respective military establishments. Indeed, in his address at the Summit, Eisenhower strongly emphasized the utility of the concept in not only establishing a reliable means of confirming mutually-agreed armament holdings (including nuclear stockpiles), but also mitigating more immediate risks related to military force posture/disposition and the real or perceived potential of surprise attack.¹²⁹

¹²⁷ United Nations Secretariat, *State Treaty for the Re-establishment of an independent and democratic Austria*, Treaty Series, Volume 217 (New York, United Nations), 223-379.

¹²⁸ Saki Dockrill and Gunter Bischof, "Introduction. Geneva: The Fleeting Opportunity for Détente," 19.

¹²⁹ Universal-International News, "At the Summit. Leaders Open Big-4 Parley at Geneva," (1955) [journal on-line]; available from http://www.youtube.com/watch?v=HjY3ELs_4ZI; Internet; accessed 8 September 2014, n.p.

Taken aback somewhat by this proposal, along with additional offers to disclose even more information concerning the United States' strategic order of battle (contingent upon reciprocal disclosure), Soviet representatives (which included Communist Party First Secretary Nikita Khrushchev and Foreign Minister Vayacheslav Molotov) rejected the intrusive nature of such a concept, which was perceived as a significant enhancement to American strategic targeting and intelligence-gathering capability. This is understandable, given the clear strategic nuclear advantage held by the United States at that time, along with the fact that the concept was indeed a form of overt and controlled reciprocal intelligence acquisition in an era preceding space-based sensors. John Prados observed that the United States also had much to gain politically in its offer, given its superiority in both nuclear forces and integral strategic reconnaissance, as exemplified by the introduction of the U-2 "spy" aircraft at that time. Irrespectively, Eisenhower had introduced what he had described as "an idea that might open a tiny gate in the disarmament fence," by according the Soviet Union the opportunity to partake, as an equal partner, in a collaborative scheme of reciprocal military information exchange, backed up by airborne monitoring and inspection.¹³⁰

Although the Open Skies proposal was effectively dismissed by the Soviets, the "Spirit of Geneva" nevertheless served to ease East-West tensions through direct contact and dialogue on security and cooperation, while introducing some innovative new conceptions of arms control, disarmament and security-building. The Summit also underscored the unique post-war conditions -- including the permanent threat of nuclear

¹³⁰ John Prados, "Open Skies and Closed Minds: American Disarmament Policy at the Geneva Summit," in *Cold War Respite: The Geneva Summit of 1955*, ed. Gunter Bischof and Saki Dockrill (Baton Rouge: Louisiana State University Press, 2000), 225.

conflict – that had emerged as an imperative to seeking courses through which to better safeguard peace and security, irrespective of the East-West ideological chasm.¹³¹

Three-and-a-half decades later, with the Cold War drawing down and in correlation with the advent of the CFE Treaty, the Vienna Document and other security accords, the Open Skies concept was reintroduced by United States President George H.W. Bush. Bush pitched Open Skies as a means of specifically enhancing security and confidence between NATO and the WTO within what had become a markedly altered strategic security paradigm.¹³² While both the Soviet Union and United States had developed, over the years, significant satellite-based national reconnaissance capabilities -- some of which were being employed for the verification of specific nuclear arms control agreements (i.e., SALT I and START II) -- such resources were tightly controlled and largely unavailable to the international community. John Hawes observed that major changes in the international dynamic had significantly transformed the national security imperatives of states:

There is no longer a simple bipolar confrontation. There is no single formula for structuring security questions.... Many states, both large and small, that had become accustomed to Cold War security alignments, are now reassessing their international position. The security role of international organizations, including the United Nations and regional bodies, is becoming increasingly important. In this context it is essential that as much relevant information as possible be directly available to all states so that they can make more accurate assessments

¹³¹ Saki Dockrill and Gunter Bischof, "Introduction. Geneva: The Fleeting Opportunity for Détente," 19.

¹³² Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War* (Stanford: Stanford University Press, 2014), 22.

of their security situation, their force requirements, and the possibilities for international action and arms control.¹³³

It was in this context that Bush had assessed the emergent strategic environment as one that would now favour the establishment of an evolved aerial observation regime. While undertaken in part as a specific American response to a number of domestic and foreign policy reforms introduced by Moscow, Bush believed that such a regime would more fully secure Moscow's commitment to increased security transparency and reform.¹³⁴ As the result of preliminary bilateral consultations held with Canadian officials, the "Open Skies" concept was subsequently expanded beyond the purview of the United States and the Soviet Union and their respective alliances as a broad-based multilateral accord. This modification was made with a view to empowering smaller nations with the means of independently acquiring information on the military forces and activities of other states of potential concern to them.¹³⁵

With this modification, the Bush proposal received strong Canadian endorsement and advocacy. This helped garner the support of other Allies and even some WTO members, based upon the premise that such a regime would have an "equalizing" effect within an increasingly open and flexible international security structure. In a remarkably short period, sufficient momentum had been generated to convene an international conference on Open Skies, hosted by the Canadian government

¹³³ John Hawes, "Open Skies: Beyond Vancouver to Vladivostok." *Stimson Center Occasional Paper No. 10 (December 1992)* (Washington: Henry L. Stimson Center, 1992), 23-24.

¹³⁴ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 19-20.

¹³⁵ Dan Lindley, "Cooperative Airborne Monitoring: Opening the Skies to Promote Peace, Protect the Environment, and Cope with Natural Disasters," (Notre Dame: University of Notre Dame, 2006), 4.

in Ottawa, in February 1990. Subsequent negotiations were conducted over the following two years in Budapest, Vienna, and Helsinki.¹³⁶

Despite Bush's executive sponsorship and Soviet President Mikhail Gorbachev's overall receptiveness, both leaders encountered considerable difficulties within their respective administrations. The United States defence and intelligence establishments had sought to advantage themselves by securing specific procedural provisions, along with the employment of superior American sensor and other technologies for their exclusive use. Corresponding Soviet establishments sought various technical and procedural caveats so as to prevent any American technical advantage and otherwise limit the concept's aim of full transparency in order to protect their security interests.¹³⁷ Internal divisions on both sides ensued, with various positions taken by respective agencies. Dan Lindley characterized the internal struggle on the American side as follows:

As these agencies moved to make the proposal concrete and firm up the U.S. bargaining position, they split among and within each other between those who wanted intrusive inspections and were willing to give up some secrecy in return, and those who placed a higher priority on secrecy.¹³⁸

Negotiations in Ottawa and Budapest were subsequently impeded by these varied exigencies and caveats, along with the general bureaucratic obstinacy of both Washington's and Moscow's defence and intelligence establishments. Ultimately, it was the personal insistence of Bush and Gorbachev that ensured the fundamental

¹³⁶ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 59, 83, 112, 147.

¹³⁷ *Ibid.*, 31-35.

¹³⁸ Dan Lindley, "Cooperative Airborne Monitoring: Opening the Skies to Promote Peace, Protect the Environment, and Cope with Natural Disasters," 5.

principles of a balanced and transparent accord were effectively preserved. Their resolve was further bolstered by the enthusiastic support of several other states that, lacking organic strategic reconnaissance capabilities, recognised the principle, practical application and overall value of the concept. Resistance nevertheless continued in the United States and Soviet Union until both leaders had to compel their respective bureaucracies to fall into line. This proved to be a more daunting undertaking for Gorbachev who, in August 1991, had to overcome an attempted government and military coup. It was only then, following the resultant removal of several hardliners, that the Soviets returned to the negotiations later that year, which led to an agreement finally being reached.¹³⁹ In the end, both sides had compromised significantly, with Washington abandoning its attempt to secure superior sensors for their exclusive use and Moscow accepting unrestricted observation overflights, with no territorial constraints.

Although the Treaty was signed in Helsinki on 24 March 1992, a decade of provisional application would ensue before it would finally enter-into-force on 1 January 2002. This followed an extended period of ratification in Ukraine, Russia and Belarus that had been punctuated by internal political upheaval, institutional resistance and cost-related issues concerning the new regime.¹⁴⁰

The first major European security accord established after the Cold War, the Open Skies Treaty has been widely regarded as the most extensive international mechanism ever established in promoting transparency and confidence regarding the disposition and posture of military forces and other strategic capabilities of its

¹³⁹ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 106.

¹⁴⁰ *Ibid*, 149, 152.

respective States Parties.¹⁴¹ The highly unique circumstances under which the regime's concept was introduced, negotiated and eventually codified, serve to underscore the exceptional conditions that existed in generating the political will necessary to create such an accord. In this instance, high-level political intervention was required -- at considerable risk -- to overcome persistent institutional intransigence in order to establish this unprecedented security regime.¹⁴²

Interrelationships

As indicated here, the conception and formulation of the three regimes have not only been closely interconnected with major developments in international relations, but represent distinct evolutions in their own right. Irrespective of their specific origins, orientation and jurisdiction, they have reshaped contemporary concepts of security. With the CFE Treaty establishing a controlled balance of conventional forces; the Vienna Document instituting extensive CSBM; and the Open Skies Treaty providing a framework of transparency through aerial observation, they constitute the vital symbiotic constituents of the OSCE's overarching security and cooperation framework.

While not exhaustive, Figure 2.3 provides a general frame of reference for the chronological sequence and interrelationships of events associated with the evolution of the CFE Treaty, Vienna Document and Open Skies Treaty, together with the CSCE and OSCE, as noted here and in subsequent chapters.

¹⁴¹ Department of State, "20th Anniversary of the Treaty on Open Skies," Media Note (Washington: United States Department of State, 2012), n.p.

¹⁴² Peter Jones, interview with the author, University of Ottawa, 25 July 2014.

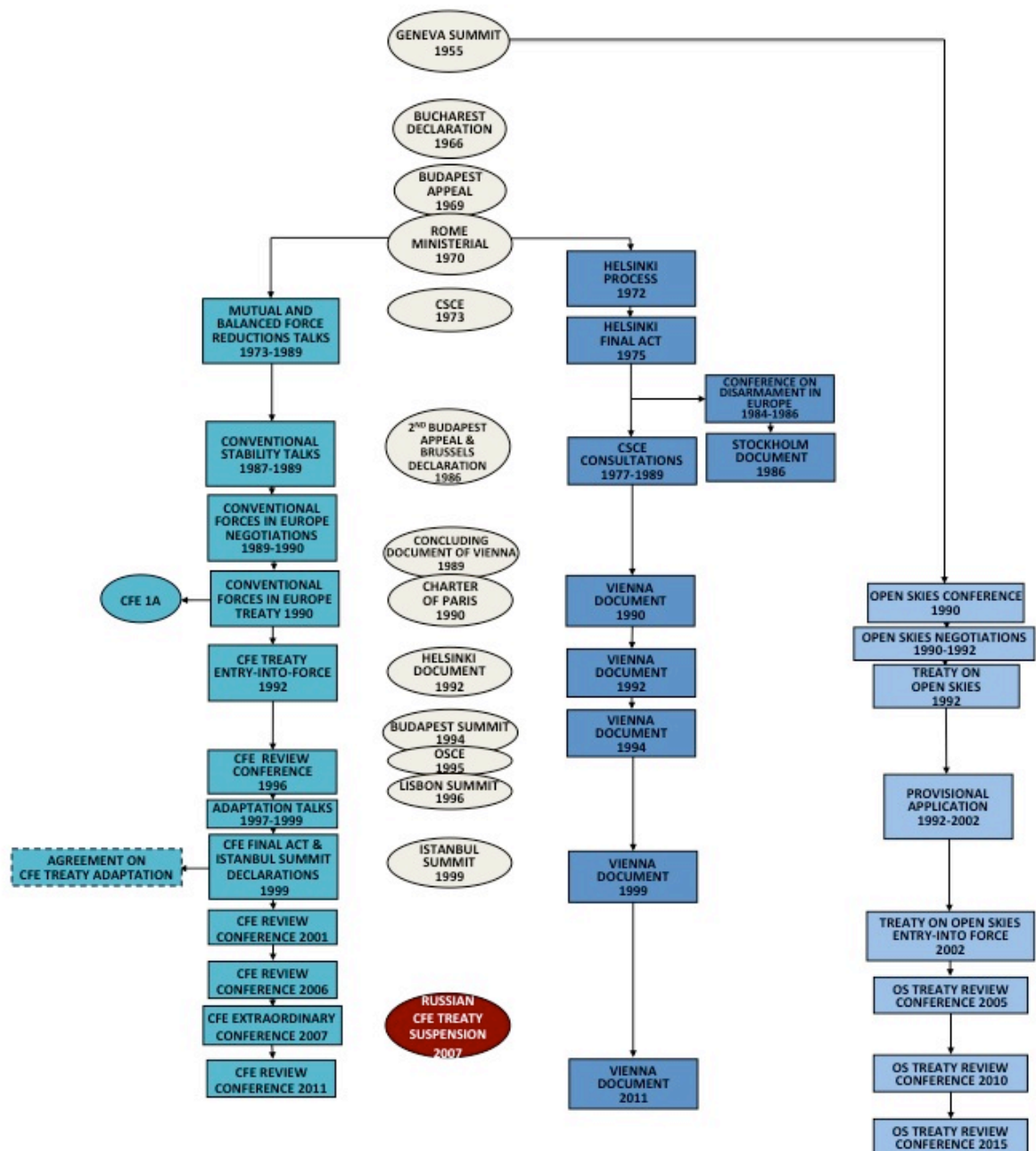


Figure 2.4: Contemporary evolution of conventional arms control¹⁴³

The interdependence of these regimes was effectually denoted in remarks by Damian Leader, Chief United States Arms Control Delegate in a 2012 address to the OSCE Parliamentary Assembly:

¹⁴³ Author's depiction.

...the U.S. believes in the indivisibility of security throughout the Euroatlantic area and the interdependence of all three OSCE Dimensions. Human rights, economic development, and military transparency, along with the OSCE instruments that promote them, are all part of a seamless cloth of comprehensive European security. Arms control is a key part of that effort. ...all three regimes contribute to security and stability in their unique ways, but when they are working in harmony, the result is greater stability for all.¹⁴⁴

Generally speaking, the respective provisions of these regimes incorporate extensive individual and collective compliance and conformity stipulations in order to attain their designed purpose. While greater detail will be provided in subsequent chapters, they are summarized as follows:

- The CFE Treaty places two major limitations on conventional armaments, equipment and personnel (under CFE-1A) within its designated Area of Application; namely, 1) overarching ceilings established between the respective “Eastern and Western Groups of States Parties,” and 2) geographic limitations within specified concentric geographic zones to preclude the conventional force concentrations required for large-scale offensive operations. These “Treaty Limited Equipment” ceilings include specific categorizations of tanks, armoured combat vehicles, artillery, attack helicopters, and combat aircraft. Detailed military data exchanges, monitoring and inspections enable valid measurements and assessments, thereby ensuring the reliability of reported force dispositions;
- The Vienna Document establishes CSBM concerning specific military activities conducted within its designated “zone of application.” This is attained through a combination of an annual “global exchange” of

¹⁴⁴ Damian Leader, *Remarks at the OSCE Parliamentary Assembly Winter Session Special Debate: The Future of Conventional Arms Control in the OSCE Area, 24 February 2012*. United States Mission to the Organisation for Security and Cooperation in Europe [journal-on-line]; available from http://osce.usmission.gov/feb_24_12_futureconventionalarmscontrol.html; Internet; accessed 8 September 2014, n.p.

military information, force disposition notifications, area inspections, on-site evaluations and observation visits, along with various forms of military-to-military contacts; and

- The Open Skies Treaty provides broad military transparency through the use of unrestricted observation flights conducted over the entire territories of all States Parties, employing approved observation aircraft, procedures and certified sensors; namely, electro-optical panoramic and framing cameras, video, infra-red line scanning systems and sideways-looking synthetic aperture radars.

Despite the significantly evolved and elaborate nature of these international security structures, it is important to recall that their basis remains fundamentally adversarial in nature. That is, arms control agreements are negotiated to best mitigate threats to national security or other detrimental consequences.¹⁴⁵ Nevertheless, while discord constitutes an intrinsic element of regimes and international relations generally, cooperation can still exist. In this regard, Stephen Krasner's characterisation of regimes as "institutions possessing implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations,"¹⁴⁶ is germane. More specifically:

... dilemmas of common aversions and dilemmas of common interest are distributions of references that do create incentives to establish and maintain international regimes. Both involve strategic interaction. Dilemmas of common aversions refer to situations in which actors must coordinate their policies by

¹⁴⁵ Jeffrey D. McCausland, "Op-Ed: Developing a New Approach to Conventional Arms Control," 2, 5.

¹⁴⁶ Stephen D. Krasner, "Structural causes and regime consequences: regimes as intervening variables," in *International Regimes*, ed. Stephen D. Krasner (Ithaca: Cornell University Press, 1983), 2.

agreeing on some set of rules or conventions to avoid mutually undesirable outcomes.¹⁴⁷

Given the precarious strategic security situation that existed only a few decades ago, it remains highly important to recognise not only the tremendous achievement represented by the three major conventional arms control accords, but also the exceptional circumstances that led to their creation. It is equally important to bear in mind the need to preserve their fundamental integrity, as observed by Jeffery D. McCausland:

At its very core, any arms control agreement depends upon a harmony of interest among the signatories. This harmony is based on careful analysis by each nation that the security benefits gained by entering the regime outweigh the risks associated with reducing military forces and accepting a transparency regime that includes data exchanges and verification inspections. Consequently, it is critical to underscore once again that arms control is a “method or way” to achieve the “objective” of improved security.¹⁴⁸

McCausland further explains that arms control remains a function of states’ foreign and security policies, which directly impact upon how an accord is established and what is required to sustain it. That said, he also notes that within the contemporary European landscape, cooperative security, the indivisibility of security and military transparency should take precedence in order to ensure that any new agreements do not encumber the maintenance or improvement of existing agreements. This is an important consideration, given the view held by many proliferation security experts that the CFE Treaty has become obsolete and that the Vienna Document and Open Skies

¹⁴⁷ Stephen D. Krasner, “Global Communications and National Power: Life on the Pareto Frontier,” *World Politics* 43 (April) (Princeton: Princeton University, 1991): 338.

¹⁴⁸ Jeffrey D. McCausland, “Op-Ed: Developing a New Approach to Conventional Arms Control,” 3.

Treaty are not far behind. Others maintain that recalibration, adaptation or other forms of modification to existing regimes constitute more measured, pragmatic and logical approaches than their outright replacement.

Conclusion

Both the essential value and relevance of conventional arms control and CSBM have been introduced here as prefatory frame of reference, as well as to emphasise the imperative of political will and common resolve in their successful oversight and implementation. In order to provide suitable context, general conceptual characterisations have been included with the acknowledgement that the three regimes, as currently established and implemented, are fraught with “real world” imperfections, issues and challenges. Nevertheless, when considered in essential terms, their fundamental value continues to be recognized and supported. In a 2012 address to the Stockholm International Peace Research Institute, Rose Gottemoeller, the United States Acting Undersecretary of State for Arms Control and International Security, asserted that the CFE Treaty, Vienna Document and Open Skies Treaty continue to “provide a foundation for security in our strategic relationships.”¹⁴⁹ Moreover, while acknowledging the myriad challenges (and associated scepticism) facing these regimes with respect to their continued viability, suitability and relevance, Gottemoeller further emphasised that:

“... conventional arms control, done right, can significantly improve security on the continent by helping to address today’s concerns. It can provide confidence

¹⁴⁹ Rose Gottemoeller, “Revitalizing Conventional Arms Control in Europe,” *2012 Remarks to the Stockholm International Peace Research Institute* (2012); [journal-on-line]; available from www.state.gov/t/us/197648.htm; Internet; accessed 4 January 2012, n.p.

regarding the military activities and intentions of neighbors, especially in sensitive areas. We also need to spend our stretched defense budgets wisely. Arms control can help us do that, for the more predictable our relationships, the better we can plan our defense spending. The conventional arms control regime that has been in place in Europe since the end of the Cold War contributes to the security of the continent. In order to maintain security and stability, this regime requires constant tending.¹⁵⁰

At this juncture, it is important to recall that, irrespective of its evolution or sophistication, conventional arms control does not constitute a means unto itself, but rather a political process leading to a consensus-based, formalised method through which the specific security objectives of states are secured. Accordingly, McCausland's aforesaid "harmony of interest" can be expected only when inherent disaccord, variance and risk are sufficiently outweighed -- not just in the establishment, but also in the sustained oversight and implementation of any such agreement.¹⁵¹

This chapter has provided an elementary overview and perspective concerning the contemporary concept of conventional arms control, its "fit" within the broader security spectrum, and the principal characteristics of its operating model. The accompanying prehistory has illustrated the closely interrelated circumstances and conditions enabling their formulation and evolution. Together, they comprise an important frame of reference in consideration of the following case studies and analysis, with a view to ensuring a common understanding in consideration of the degraded state of the three major conventional arms control regimes and their prospects of recovery.

¹⁵⁰ Rose Gottemoeller, "Revitalizing Conventional Arms Control in Europe," n.p.

¹⁵¹ Jeffrey D. McCausland, "Op-Ed: Developing a New Approach to Conventional Arms Control," 3.

CHAPTER 3
CASE STUDY 1:
THE TREATY ON CONVENTIONAL ARMED FORCES IN EUROPE

Introduction

This chapter will provide a detailed case-study examination and appraisal of the establishment, characteristics, performance, evolution and ultimate diminution of the *Treaty on Conventional Armed Forces in Europe*, commonly known as the Conventional Forces in Europe Treaty (or CFE Treaty). Each area of examination will be undertaken with respect to the Treaty's fundamental purpose, application and overall effectiveness as a major instrument of conventional arms control and international security. Associated estimations will include political, technical and operational factors as they specifically pertain to the Treaty's implementation, record of performance, and current state. The assigned research questions will be addressed through an account of those factors that have specifically contributed to the decline of the regime, the implications of this decline and the prospects of recovery. These factors include those specifically pertaining to Treaty governance, management and implementation, which will serve to demonstrate the critical importance of their interactions and interdependence.

Specific considerations in this case study will include:

- the prevailing conditions enabling the negotiation and establishment of the Treaty;

- an overview of the Treaty's particulars, characteristics and performance in attaining and maintaining its specified objectives;
- major developments in the evolution of the Treaty;
- circumstances and contributing factors affecting the governance, management and implementation of the Treaty and their resultant impact;
- specific efforts to adapt and sustain the Treaty; and
- the current state of the Treaty in terms of its viability, implications and outlook.

Accordingly, the chapter will explain how the exceptional circumstances associated with the establishment of the CFE Treaty enabled its remarkable early achievements. It will also demonstrate how inattention and inaction in addressing transgressions and other stresses contributed significantly to the weakening of the Treaty's integrity, eventually resulting in its current nominal state. This will illustrate the vital importance of preserving the viability of the interdependent components of the governance, management and implementation model.

Backdrop

As noted in the preceding chapter, extraordinary geostrategic circumstances enabled the conceptual formulation, negotiation and eventual establishment of the CFE Treaty. Indeed, the introduction of the "nuclear equation" at the end of World War II resulted in an unprecedented alteration of the international system and with it, the security strategies and foreign policies of states within emergent alliances. This was

initially denoted by United States - Soviet enmity and the establishment of nuclear deterrence as a principal determinant of strategic military doctrine. Subsequent strategic parity and various manifestations of antagonism between the United States and Soviet Union led to myriad nuclear and conventional weapons security-related evolutions throughout the Cold War.

While emergent détente between the United States and Soviet Union dominated the global security environment in the 1970s, it was apparent that bilateral consultative mechanisms were proving insufficient in addressing the concerns of other strategic security partners. This insufficiency was reflected in a joint statement of principles that concluded the May 1972 Moscow Summit. One of the major milestones of strategic détente between Washington and Moscow, the Summit included the signing of the Anti-Ballistic Missile Treaty, the first Strategic Arms Limitation Treaty and the United States-Soviet Union Incidents at Sea Agreement. It also addressed aspects of Euro-Atlantic security, but did so without the participation of other stakeholders. As noted by Linda P. Brady, with the release of the Summit's joint statement of principles, "West Europeans expressed concern about the possible compromise of their interests in a bilateral forum."¹⁵²

As détente progressed, it became increasingly apparent that the "introduction of a European dimension to what had been until then an essentially bilateral arms control process" was required.¹⁵³ Given the Soviet Union's growing impulse to engage in the political and economic aspects of détente (as evidenced by repeated proposals for a

¹⁵² Linda P. Brady, "Negotiating European Security: Mutual and Balanced Force Reductions (MBFR)," *International Security Review*, Vol. I, No. II (1981): 190.

¹⁵³ Linda P. Brady, "Negotiating European Security: Mutual and Balanced Force Reductions (MBFR):" 190.

conference on security and cooperation in Europe), a momentous opportunity emerged to negotiate the establishment of a broader multilateral framework within which specific military-related concerns could be addressed in return for participation in the broader security and cooperation consultations sought by Moscow. Soviet reticence to engage in a multilateral military dialogue notwithstanding, subsequent compromise resulted in the Mutual Balanced Force Reduction (MBFR) negotiations, later renamed the Mutual Reductions of Forces and Armaments in Central Europe, which first took place in Vienna, Austria in October 1973. These negotiations represented a unique convergence of circumstances that would eventually enable unprecedented advancements in conventional arms control and disarmament. Indeed, the exceptional conditions that led to these initial negotiations would continue to influence the consultations and outcomes that would follow.¹⁵⁴

MBFR Negotiations, Real World Developments and Resultant Outcomes

Given the variance of Soviet and Western objectives, it is important to recall that the CFE Treaty was the progeny of both the relatively focused MBFR dialogue (i.e., that between the United States/NATO and Soviet Union/WTO) and the broader, politically-oriented dialogue specifically sought by the Soviet Union through the CSCE. While the initial CSCE consultative process successfully concluded with the 1975 signing of the Helsinki Final Act by 33 European states, the United States and Canada, MBFR talks -- beset by various difficulties -- struggled along until 1989, when they were formally terminated. Although these bloc-to-bloc negotiations concluded without an agreement, they were successful insofar as introducing and refining CSBM proposals

¹⁵⁴ John Van Oudenaren, *Détente in Europe. The Soviet Union and the West since 1953* (Durham: Duke University Press, 1991), 209-213.

that were subsequently negotiated in the CSCE process. Furthermore, MBFR served very much as the foundation upon which dedicated consultations on conventional forces in Europe would be subsequently undertaken.¹⁵⁵

In examining both the genesis and evolution of the consultative processes undertaken within MBFR and CSCE, it is essential to bear in mind the prevailing geostrategic circumstances and their impact upon respective national security interests of that time. Indeed, these circumstances were appositely reflected in the positions adopted and actions carried out throughout that extended period. As noted by Wally Walters, the security interests of the United States were initially oriented towards the attainment of a more stable, manageable and affordable balance of power. This included, to the extent possible, the continued containment of the Soviet Union through the deterrence afforded by American strategic (including nuclear) capabilities and the employment of NATO to further support and sustain them. This approach was largely predicated by the general expectation of the survival of the Soviet Union, however evolved, and the continuation of the fundamental ideological rivalry between the two superpowers.¹⁵⁶

While the Soviet Union's approach had necessarily taken into account unavoidable realities concerning the disposition of military forces in Europe, its reluctant acceptance of MBFR was largely driven by the fact that it constituted a condition for Western European states' participation in the political and economic-oriented CSCE. The Soviets had specifically sought CSCE under a broader strategy of

¹⁵⁵ Jane M.O. Sharp, *Striving for Military Stability in Europe, Negotiation, implementation and adaptation of the CFE Treaty* (Milton Park: Routledge, 2006), 9-10.

¹⁵⁶ Wally Z. Walters, "International Relations Theory and the Process of Ending the Cold War," (research thesis, United States Command and Staff College, 1995), 1-3.

détente, as means of further consolidating their strategic security interests in Europe. Moscow initially opposed MBFR on the grounds that security was a political matter more suitably assigned to CSCE, which should logically precede force reductions and arms control dialogue. When agreement was finally reached on having both CSCE and MBFR in 1972, both sides had settled on having no formal linkages between the two.¹⁵⁷ While these delineations were worked out, Moscow's strategy was suitably adapted, while continuing to seek the consolidation of Soviet/WTO capabilities and military force levels in Central and Eastern Europe, ensure a stable and manageable reduction of United States military forces and otherwise advance Soviet influence in the security affairs of Western Europe.¹⁵⁸ Outside of these goals, there existed no major incentive for the Soviet Union in having the size and composition of either alliance's conventional forces dramatically altered, as noted in this United States Central Intelligence Agency appraisal:

Neither in the MBFR, nor in their broader détente policies for that matter, are the Soviets working for a fundamental reconciliation between East and West, nor are they interested in underwriting West Europe's stability and security.... The Soviets would see much greater disadvantages than potential gains in an agreement which substantially altered present force levels or combat capabilities on either the NATO or Warsaw Pact sides.... The Soviets will hold hard to the position that the existing relationship of forces should remain essentially unchanged.... The Soviet leaders say, and seem to believe, that the "correlation of international forces" has shifted in the USSR's favor.¹⁵⁹

¹⁵⁷ John Van Oudenaren, *Détente in Europe. The Soviet Union and the West since 1953*, 209-213.

¹⁵⁸ Central Intelligence Agency. *National Intelligence Estimate. Soviet and Eastern European Attitudes towards MBFR* (SECRET – declassified for release) (Washington: Central Intelligence Agency, 1973), 1-3.

¹⁵⁹ Central Intelligence Agency. *National Intelligence Estimate. Soviet and Eastern European Attitudes towards MBFR*, 1, 9.

This appraisal is important in considering the context of MBFR negotiations and subsequent consultations, oversight and implementation. That is, arms control should not be considered an exclusive means of increasing security and stability, but rather part of a broader matrix of concessions derived from competing national policies and strategies. Indeed, multilateral arms control moves the concept further towards a “larger logic of governmentality” with more involved forms of regulation and control than traditional inter-state regulatory agreements.¹⁶⁰ This renders the essential concept of conventional arms control no less valid, as regardless of the rationale for entering into any such agreement, the resultant formalisation of consensus establishes a corresponding framework that imposes binding obligations and rights, in accordance with its specific terms and conditions. The point here is that, regardless of competing policies and strategies, the preservation of the fundamental integrity of the established framework remains essential to its viability – an elemental aspect of this thesis and its analysis.

During the MBFR talks, the United States and NATO had initially proposed to withdraw 29,000 troops from Europe in return for a corresponding Soviet withdrawal of 1,700 tanks and 68,000 troops. That would be followed by a reduction by both sides to a total of 900,000 troops apiece. The Soviet Union and WTO proposed removing 20,000 soldiers on each side and freezing troop strengths at this reduced level.¹⁶¹ From this point of departure, subsequent MBFR negotiations would entail a broad range of proposals and counter-proposals, including variations in geographic boundaries and

¹⁶⁰ Keith Krause, “Leashing the Dogs of War: Arms Control from Sovereignty to Governmentality,” *Contemporary Security Policy*, Volume 32 Issue 1 2011: 20.

¹⁶¹ Rudolf Th. Jurrjens, and Jan Sizoo, *Efficacy and Efficiency in Multilateral Policy Formation. The Experience of Three Arms Control Negotiations: Geneva, Stockholm, Vienna* (The Hague: Kluwer Law International, 1997), 325-327.

corresponding force reduction formulae. Generally speaking, proposals from the United States and NATO entailed specific, targeted reductions, followed by the establishment of common personnel ceilings for both alliances. The Soviet Union and WTO alternatively proposed phased percentage-based reductions of both personnel and equipment, with these reductions undertaken nationally, rather than by each alliance as a whole. Elaborate variations of these two essential proposals continued throughout the negotiating process.¹⁶²

As talks continued into the late-1970s, dialogue had reached the point where nuclear weapons and their delivery systems were introduced into the force reduction dynamic, adding a critical new component to the overall consultative process and a new phase of proposals and counter-proposals. During this latter period, the MBFR process was significantly affected by two specific developments:

- a major variance in the WTO's reported values and NATO estimates concerning the WTO air and ground personnel figures, necessary to establish a baseline for the exchange of military data, bringing MBFR to a standstill; and
- NATO's 1979 decision to deploy intermediate-range nuclear missiles within the European theatre.¹⁶³

While these two events effectively stalled the MBFR process, a series of subsequent "real world" developments served to effectively compel the Soviet Union to

¹⁶² Rudulf Th. Jurrjens, and Jan Sizoo, *Efficacy and Efficiency in Multilateral Policy Formation. The Experience of Three Arms Control Negotiations: Geneva, Stockholm, Vienna*, 325-327.

¹⁶³ John Van Oudenaren, *Détente in Europe. The Soviet Union and the West since 1953*, 218-220.

adopt a more pragmatic approach to proliferation security-related dialogue. Foremost of these were:

- the introduction of NATO's "Flexible Response" concept; i.e., revised doctrine concerning the employment of nuclear weapons to counter the overwhelming superiority of the WTO's conventional forces;
- the Reagan administration's remarkable build-up of American intermediate and long-range nuclear forces; and
- the introduction of the United States' Strategic Defense Initiative.¹⁶⁴

Generally speaking, these developments convinced Soviet General Secretary Mikhail Gorbachev that effective Soviet countermeasures to the United States' technological and financial investments in strategic defence were becoming increasingly untenable. By 1985, as the United States deployed new intermediate nuclear missiles in Europe, the Soviet Union agreed to the resumption of a range of negotiations on strategic, intermediate and defensive weapons, leading to the milestone Intermediate Nuclear Forces Agreement and Strategic Arms Reduction Treaty.¹⁶⁵ While remarkable in its own right, this phase of United States-Soviet engagement also put into motion the conditions that would ultimately enable significant progress in complementary efforts to reduce conventional forces:

Reagan presided over a massive nuclear buildup and launched an expensive effort to build a defense against strategic missiles, which exacerbated tensions

¹⁶⁴ Darryl G. Kimball, "LOOKING BACK: The Nuclear Arms Control Legacy of Ronald Reagan," *Arms Control Today* [journal-on-line]; available from http://www.armscontrol.org/act/2004_07-08/Reagan; Internet; accessed 15 April 2015, n.p.

¹⁶⁵ William D. Watson, "Trust, but Verify: Reagan, Gorbachev, and the INF Treaty," *The Hilltop Review, Volume 5 Issue 1* (Fall 2001) Article 5 [journal on-line]; available from <http://scholarworks.wmich.edu/cgi/viewcontent.cgi?article=1045&context=hilltopreview>; Internet; accessed 24 July 2015: 36-38.

with Moscow.... Yet, Reagan's unconventional leadership style and determination also allowed him to reach out to the Soviet leadership and relate to Gorbachev's new and bold thinking. Together the two leaders set their nations on a path toward arms control arrangements that reflected their personal abhorrence for nuclear war and addressed domestic and international concern about where Cold War nuclear rivalry might eventually lead without such restraint.¹⁶⁶

In 1986, in response to revised NATO proposals designed to overcome the stalemate on WTO military data, Gorbachev proposed substantial reductions in ground and tactical air forces in Europe, formal establishment of the Soviets' previously defined "area of application;" (i.e., the "Atlantic to the Urals" (ATTU) region, comprising most of Europe, including Russia, extending east to the Ural Mountain Range) and instituting a robust verification regime. Following further consultations and refinement, agreement was reached on a "dual-track" approach that would:

- build upon the confidence- and security-building provisions of the 1986 Stockholm Document, formalizing on-site inspections; and
- establish conventional stability in Europe through negotiations on reductions and ceilings on conventional forces, weapons, and equipment systems within the ATTU region.¹⁶⁷

Concurrent with these developments were the remarkable social, economic and political events that took place in Eastern Europe from 1988 to 1989, ultimately leading to the dissolution of the Soviet Union and with it, the WTO. Indeed, by this stage many of Gorbachev's decisions might be better characterized as unavoidable, rather

¹⁶⁶ Darryl G. Kimball, "LOOKING BACK: The Nuclear Arms Control Legacy of Ronald Reagan," n.p.

¹⁶⁷ Ralph A. Hallenbeck and David E. Shaver, editors. *On Disarmament: The Role of Conventional Arms Control in National Security Strategy* (New York: Praeger Publishers, 1991), 8.

than elective. These included the unilateral withdrawal of 50,000 troops from Eastern Europe and outright demobilization of 500,000 more military personnel, which were quickly followed by the unilateral reductions of both troops and armaments of other WTO states.¹⁶⁸

Although the sudden termination of the MBFR dialogue in 1989 might be simply regarded as the result of an overall lack of progress, it might be better characterised as recognition of these broad-based talks having been overtaken by “real world” events. Moreover, there now existed a new imperative to shift to more focused negotiations in areas offering a better chance of success, as denoted in the final MBFR Communiqué of 2 February 1989:

The extent of common ground has proven insufficient to enable the participants to agree on a treaty. Nevertheless the positions of the two sides have converged on a number of issues. The participants have gained valuable experience and a clearer picture on what will be necessary to achieve mutually agreeable and verifiable reductions and limitations of forces and armaments in Europe.¹⁶⁹

The MBFR-mandated Conventional Forces in Europe negotiations that commenced on 7 March 1989 in Vienna therefore set to codifying the best compromise on force reductions that could be attained under these exceptional circumstances. In this respect, growing convergence on specific issues was very much a function of the significant political upheaval faced by a weakened Soviet Union and its WTO security partners. As stated by Sergai Karaganov, a former advisor to President Boris Yeltsin

¹⁶⁸ Kevin Wright, *Arms Control and Security. The changing role of conventional arms control in Europe* (Farnham: Ashgate, 2000), 36.

¹⁶⁹ Department of State, “MBFR Talks Conclude (Final Communiqué) (Transcript)” *Department of State Bulletin* (Washington: Department of State, 1989), n.p.

and deputy director of the Institute of Europe: “There is wide[s]pread feeling that the United States pushed too hard when Russia was weak and that the [CFE] treaty is unfair.”¹⁷⁰ Certainly, the arguable inequity of Soviet concessions made “under duress” is a point that has been subsequently and repeatedly made by Russian officials: “Moscow considers the original CFE treaty... to be discriminatory and out-dated since it does not reflect the dissolution of the Warsaw Pact, the breakup of the Soviet Union, or recent NATO expansion.”¹⁷¹ This raises an important underlying consideration of the diminution of conventional arms control. That is, legally- or politically-binding force notwithstanding, regime integrity is nevertheless susceptible to latent disaccord, irrespective of the consensus attained in its codification.

Enter the CFE Treaty

Following 20 months of intensive negotiations, the CFE Treaty was signed at the CSCE Summit in Paris on 19 November 1990 and entered-into-force on 17 July 1992.¹⁷² Legally-binding, the CFE Treaty formally set limitations on the number of battle tanks, armoured combat vehicles (ACVs), heavy artillery, combat aircraft, and attack helicopters deployed within its designated Area of Application (AOA), thereby establishing a regulated balance of conventional forces between NATO and WTO countries currently comprising the Treaty’s 22 (now 30) States Parties.¹⁷³

¹⁷⁰ Jack Mendelsohn, “Stiff-arming Russia. Rolling over Moscow today may produce “Fortress Russia” tomorrow,” *Bulletin of the Atomic Scientists* July/August 1995: 4.

¹⁷¹ RIA Novosti, “Russia No Longer Bound by CFE Treaty.” *RIA Novosti*, 12 December 2007, 1-2.

¹⁷² Arie Bloed, “Two Decades of the CSCE Process: From Confrontation to Co-operation,” in *The Conference on Security and Cooperation. Analysis and Basic Documents, 1972-1993*, ed. Arie Bloed (AD Dordrecht: Martinus Nijhoff, 1993), 76-77.

¹⁷³ The change to 30 States Parties was the result of the dissolution of the Soviet Union, the “split” of Czechoslovakia into separate Czech and Slovak Republics, and the reunification of Germany.

By limiting and reducing overall numbers of conventional weapons held by respective NATO and WTO “blocs,” the Treaty was specifically designed to eliminate military armaments, equipment and personnel disparities, thereby reducing either side from attaining a conventional capability-based incentive to initiate a large-scale attack. Further, under Article VIII and the Protocol on Notification and Exchange of Information, the Treaty established an “annual exchange of military information” concerning the organization of land and air forces within the AOA, along with respective holdings of Treaty-limited armaments and equipment, as means of increasing transparency and confidence amongst States Parties. These holdings also include the number, type, and location (i.e., “declared sites” and “objects of verification,” which are individual brigade- or separate battalion-sized units and formations) of designated limited armaments and equipment, along with corresponding personnel strengths. A change of 10 percent or more in organizational structure or armament, equipment or personnel levels requires formal notification, which can be provided in the annual exchange or during the course of the year, as long as its is submitted at least 42 days in advance of such a change.¹⁷⁴

As depicted in Figure 3.1, the Treaty’s AOA includes all States Parties’ territories within the previously defined ATTU region. Within the AOA, overall conventional armaments and equipment proportionately limited between the respective military blocs are further restricted within specifically defined concentric zones, centred upon the former inter-German border. The purpose of this was to prevent the concentration of conventional arms in Central Europe, where there existed a higher likelihood of conflict. Established limits within these zones (along with attendant designated “flank”

¹⁷⁴ Conference on Security and Cooperation in Europe, *Treaty on Conventional Armed Forces in Europe* (Paris: Conference on Security and Cooperation in Europe, 1990), 61-83.

zones, in which additional limitations are imposed to preclude flanking manoeuvres by either alliance) were specifically designed to prohibit larger deployments of armour and artillery.¹⁷⁵

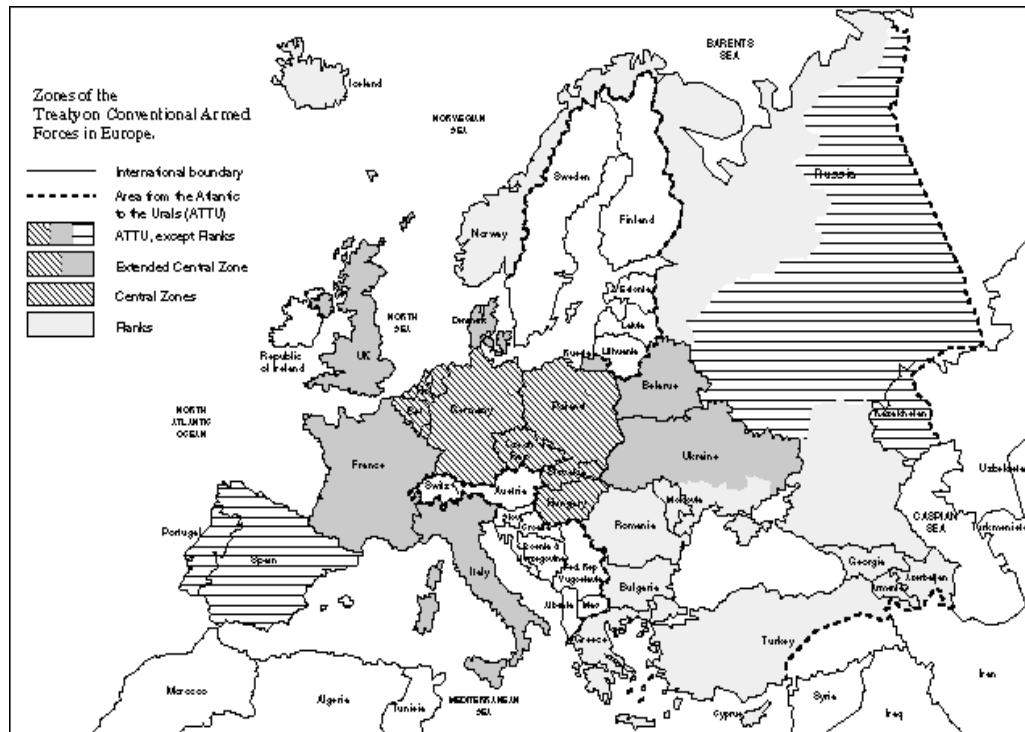


Figure 3.1: CFE Treaty Area of Application and Sub-Zones¹⁷⁶

The conventional armaments and equipment limited by the Treaty are separated into five categories and are commonly referred to as Treaty Limited Equipment (TLE). TLE includes tanks, armored combat vehicles (ACVs), artillery, attack helicopters, and combat aircraft. Established overall ceilings within the AOA are as follows:

- 40,000 battle tanks;
- 60,000 armoured combat vehicles;

¹⁷⁵ Department of National Defence, Strategic Joint Staff, *Issue Synopsis. Update on CFE Treaty Status*. (CONFIDENTIAL – Declassified) (Ottawa: DND Canada, 2008), 1–2.

¹⁷⁶ Select Committee on Defence, *Twelfth Report. The Original CFE Treaty* [journal on-line]; available from <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmdfence/295/29504.htm>; Internet; accessed 22 April 2015, n.p.

- 40,000 artillery pieces;
- 4,000 combat helicopters; and
- 13,600 combat aircraft.¹⁷⁷

Within its extensive array of provisions, the Treaty also imposes specified ceilings upon these specified classes of conventional weapons and equipment systems held at the operational unit level, as well as those contained within designated permanent storage sites.¹⁷⁸ Moreover, under the so-called sufficiency provisions of the Treaty, the proportion of these systems held by any one European State Party are further limited to approximately one third of the overall total.¹⁷⁹

An absolutely vital component of the Treaty is its comprehensive verification apparatus, designed to ensure that States Parties are provided, on an equitable basis, the necessary means through which to systematically determine compliance and conformity with its extensive provisions. States Parties are assigned a specified number of verification inspection quotas and may also participate, by invitation, in inspections conducted by other States Parties. Two on-site inspection procedures are principally employed: declared site and challenge site inspections. Declared site inspections can be undertaken at any “object of verification” (unit/formation) that permanently or routinely holds Treaty-limited armaments and equipment. States Parties have the right to conduct declared site inspections without any right of refusal. States Parties may also undertake challenge inspections in areas other than declared sites; however, this is subject to right

¹⁷⁷ Conference on Security and Cooperation in Europe, *Treaty on Conventional Armed Forces in Europe*, 1.

¹⁷⁸ *Ibid*, 1.

¹⁷⁹ *Ibid*, 11.

of refusal by the inspected State Party.¹⁸⁰ Accordingly, the employment of systematic short-notice, intrusive on-site inspections, together with the utilization of “national and multinational technical means”¹⁸¹ to further validate the Treaty’s comprehensive data exchange, have provided the critical monitoring and scrutiny required to reinforce and sustain the Treaty’s fundamental integrity.¹⁸² To date, more than 4,000 inspections have been conducted under the provisions of the Treaty’s Protocol on Inspection (POI).¹⁸³



Figure 3.2: CFE Treaty Declared Site Inspection, Reduction Period.¹⁸⁴

Governance and management of the Treaty was established with the creation of the Joint Consultative Group (JCG): a body of the CSCE and later OSCE, composed of representatives of all States Parties and overseen by a rotating chair. Specifically, the

¹⁸⁰ Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, “Conventional Armed Forces in Europe (CFE) Treaty: Executive Summary,” *Treaty Compliance. ACQ Web* [journal-on-line]; available from <http://www.acq.osd.mil/tc/treaties/cfe/execsum.htm>; Internet; accessed 3 December 2012, n.p.

¹⁸¹ The term “national technical means” commonly refers to independent verification monitoring capabilities, such as satellite imaging, used to confirm compliance and conformity with arms control regimes. They are commonly acknowledged in the agreements themselves, including Article XV of the CFE Treaty.

¹⁸² Conference on Security and Cooperation in Europe, *Treaty on Conventional Armed Forces in Europe*, 1-3.

¹⁸³ North Atlantic Treaty Organisation, “CFE Treaty’s Contribution to Euro-Atlantic Security.” *NATO’s Role in Conventional Arms Control* (29 March 2006) [Journal-on-Line]; available from http://www.nato.int/cps/en/natolive/official_texts_54709.htm; Internet; accessed 30 December 2012, 1.

¹⁸⁴ United States Defense Threat Reduction Agency photo.

JCG was, and remains, responsible for resolving ambiguities and interpretive variances, adjudicating disagreements in implementation, addressing technical issues and considering approaches to improving, enhancing and otherwise sustaining the Treaty.¹⁸⁵

Containing 23 Articles and eight Protocols, along with associated Declarations and Statements, the CFE Treaty is an extremely complicated document, requiring considerable technical expertise, administrative acumen and associated supportive resources to oversee and implement. In order to provide some further insight into the characteristics of the Treaty, a synopsis of its Articles and Protocols is provided at Appendix A.

Given its unprecedented scope, magnitude and persistent undercurrents of antipathy, it is not particularly surprising that a number of difficulties arose during the Treaty's early, pre-ratification implementation phase. This included concern over actions initiated by Moscow to relocate (rather than reduce) TLE outside of the AOA (i.e., Treaty jurisdiction), as well as transfer some of its conventional forces to the Soviet Navy, which was not subject to the Treaty.¹⁸⁶ Following a number of urgent consultations and negotiations largely held between the United States and Soviet Union (i.e., outside of the JCG), an agreement on Article III interpretation (the Article III Agreement) was reached in June 1992. In a combination of legally- and politically-binding statements, Moscow conceded to:

- reduction, through destruction, of 14,500 pieces of TLE located outside the AOA;

¹⁸⁵ Conference on Security and Cooperation in Europe, *Treaty on Conventional Armed Forces in Europe*, 115-116.

¹⁸⁶ Jane M.O. Sharp, *Striving for Military Stability in Europe, Negotiation, implementation and adaptation of the CFE Treaty*, 85-86.

- that TLE within the AOA requiring reduction would be destroyed and not merely moved outside of it;
- that TLE located east of the Urals (outside of the AOA) would not be rendered “rapidly deployable;” and
- that coastal defense forces would be included in the annual exchange of information.¹⁸⁷

The Article III Agreement was followed shortly thereafter by the October 1991 Baltic Understanding, providing for Soviet TLE located within the non-party states of Estonia, Latvia and Lithuania, to be nevertheless subject to CFE Treaty inspections and information exchanges.¹⁸⁸

Although the imperatives of the time enabled these early issues to be quickly addressed and effectively resolved, they nevertheless demonstrate both the Treaty’s complex technical character and the intrinsic fragility of its consensus. That is, despite the significantly weakened state of the Soviet Union, the concessions made were not without resistance and resentment by many in Moscow.¹⁸⁹

This initial phase of Treaty implementation was further encumbered by the continued rapid deterioration of the Soviet Union as a single federated state, culminating in its formal dissolution in late-December, 1991.¹⁹⁰ This created additional problems, in that Soviet armaments and equipment subject to the Treaty were rendered largely indeterminate in terms of their ownership. Again, with the involvement of the

¹⁸⁷ Ibid, 93-98.

¹⁸⁸ Ibid, 100.

¹⁸⁹ Ibid, 85-93.

¹⁹⁰ Edward W. Walker, *Sovereignty and the Breakup of the Soviet Union* (Lanham: Rowman and Littlefield, 2003), 163.

United States, the situation was effectively resolved with the May 1992 Tashkent Agreement, in which the eight former Soviet Republics within the AOA (i.e., Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova, Russia, and Ukraine) were formally recognized as States Parties, amongst which Treaty-subject armaments and equipment were correspondingly apportioned.¹⁹¹

In July 1992, the *Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe* (CFE-1A) was signed. An adjunct of the Treaty, the Concluding Act is a politically-binding agreement that stipulates declared national military personnel ceilings. For the purposes of the Act, States Parties determined their own limits and were obliged to meet them by November 1995. Under the Act, an aggregate ceiling of 5.7 million personnel within the AOA was established, with individual States Parties' military personnel levels duly reported in the annual information exchange.¹⁹²

Successes and Achievements

Regardless of the early (and ultimately pervasive) difficulties noted here, the overall success of the CFE Treaty in achieving its overarching objectives is undeniable. By 2008, reductions carried out during the initial 40-month reduction period¹⁹³ and undertaken voluntarily thereafter accounted for 69,955 pieces of conventional armaments and equipment, including 17,955 pieces destroyed below specified

¹⁹¹ Jane M.O. Sharp, *Striving for Military Stability in Europe, Negotiation, implementation and adaptation of the CFE Treaty*, 111.

¹⁹² Conference on Security and Cooperation in Europe, *Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe* (Helsinki: Conference on Security and Cooperation in Europe, 1992), Section II, 1.

¹⁹³ Conference on Security and Cooperation in Europe, *Treaty on Conventional Armed Forces in Europe*, 13-15.

thresholds. Other accomplishments include more than 6,000 notifications and verification inspections.¹⁹⁴ The Treaty also significantly increased confidence by establishing amongst States Parties a “culture” of transparency and predictability through its notification and verification provisions. Customarily destabilising activities, such as the deployment of new types of weapon and equipment systems, were now subject to specific notification and scrutiny. The inspection regime established by the Treaty has served as both an example and technical model for other international agreements.¹⁹⁵

In addition to the sheer magnitude of the reductions achieved under the Treaty, States Parties’ subsequent collective holdings have remained well below established limits; i.e.:

- fewer than 25,000 battle tanks of 40,000 authorized;
- fewer than 45,000 armoured combat vehicles of 60,000 authorized;
- fewer than 29,000 artillery pieces of 40,000 authorized;
- fewer than 2,000 attack helicopters of 4,000 authorized;
- fewer than 8,000 combat aircraft of 13,600 authorized; and
- fewer than 3,000,000 of 5,700,000 troops authorized.¹⁹⁶

¹⁹⁴ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. July 2010* (Washington: United States Department of State, 2010), 28.

¹⁹⁵ Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, “Conventional Armed Forces in Europe (CFE) Treaty: Executive Summary,” *Treaty Compliance. ACQ Web* [journal-online]; available from <http://www.acq.osd.mil/tc/treaties/cfe/execsum.htm>; Internet; accessed 3 December 2012, n.p.

¹⁹⁶ North Atlantic Treaty Organisation, “CFE Treaty’s Contribution to Euro-Atlantic Security,” 1.

Over a remarkably short period, the CFE Treaty and CFE 1A decisively enabled the unprecedented reduction of major conventional weapon and equipment systems, along with standing military forces, under a single regime. Its utility in allaying specific concerns and avoiding further escalations during periods of conflict was demonstrated in the application of provisions vis-à-vis Russian military operations in Chechnya and NATO operations in the Balkans.¹⁹⁷ The Treaty also served as a template for the 1996 *Agreement on Sub-Regional Arms Control Article IV*, a key supplement to the 1995 Dayton Peace Accords that ended the 1992-1995 Bosnian War in the former Yugoslavia. The success of this adapted Agreement was reflected in the common interest expressed by its three parties in acceding to the CFE Treaty at some point in the future.¹⁹⁸

An Imperfect Accord

Notwithstanding its irrefutable achievements, since its entry-into-force, the Treaty has proven increasingly difficult to oversee and execute. This is understandable, given its technical intricacy, innate disaccord and resultant instability as a security regime that, at the very least, calls for robust oversight and adroit implementation to maintain functionality. Indeed, some have opined that the reductions attained under the Treaty during its reduction phase were largely inevitable and have since rendered it impracticable as a sustained regime. Gulner Aybet observed that the Treaty's practical utility had actually been overshadowed by the prevailing conditions of the closing phases of the Cold War, supporting the view that "arms control agreements are only

¹⁹⁷ Jeffrey D. McCausland, "Conventional Weapons, Arms Control and Strategic Security in Europe," in *Strategic Security: Contending Interpretations*, ed. Elbridge A. Colby and Michael S. Geerson (Raleigh: Lulu, 2013), 284-285.

¹⁹⁸ Jeffrey D. McCausland, "Conventional Weapons, Arms Control and Strategic Security in Europe," 284-285.

reached when they are no longer necessary.” Nevertheless, Aybet conceded that the CFE Treaty had not been an “entirely useless exercise.” That is, in keeping with its formal objectives, it had served a measure of its intended purpose by securing a balance of conventional forces and eliminating the capability of any one party to launch a surprise attack or initiate large-scale offensive action.¹⁹⁹

Aybet and others have nevertheless contended that the Treaty has largely “missed the mark” in terms of its intended design, given the dissolution of the Soviet Union and WTO prior to its entry-into-force. These circumstances have significantly encumbered the execution of what was designed as a bloc-to-bloc regime, necessitating concerted efforts to accommodate not only the accession of the eight successor states of the former Soviet Union, but also major subsequent alterations in its East-West security orientation. That is, the changing security alignments within the “Eastern and Western Groups of States Parties” have significantly shifted the Treaty’s “centre of gravity.” Consequently, an increasingly imbalanced Treaty has encountered successive obstacles to its continued implementation, necessitating various extemporisations to remain nominally viable.²⁰⁰

Buoyed by the success of its reduction phase, the CFE Treaty was largely living up to its often-used depiction as “the cornerstone of European security.” By the late-1990s, however, it was clearly evident that cracks were appearing. While verification of types and quantities of major military armaments and equipment held by the 30 States Parties had been largely sustained through regular military data exchanges and intrusive

¹⁹⁹ Gulner Aybet, “The CFE Treaty: The Way Forward for Conventional Arms Control in Europe.” *Perceptions. Journal of International Affairs, Volume III, Number 4* (March-May 1996) [journal-on-line]; available from <http://www.google.ca/search?hl=en&q=Future+of+Conventional+Arms+Control&meta=>; Internet; accessed 3 February 2011, 1.

²⁰⁰ Gulner Aybet, “The CFE Treaty: The Way Forward for Conventional Arms Control in Europe,” 2-3.

on-site inspections, growing issues had developed over myriad technical details pertaining to the Treaty's Protocol on Existing Types (POET) and Protocol on Inspection (POI). This included growing interpretive variances pertaining to the specific categorisations of types of weapon and equipment systems, necessitating specific conventions to be adopted by NATO States Parties to ensure a consistent approach to noted inspection ambiguities and other observations.²⁰¹ Regardless, increasing discrepancies resulting from subjective national interpretations, technical ambiguities and a clear lack of standardisation continued to erode the essential functionality of the Treaty's POET and POI.²⁰²

These fundamental deficiencies were further exacerbated by other developments, including:

- increasing challenges and assertions made by a recovering and increasingly emboldened Russian Federation to its legally-binding Treaty obligations, including those of procedural conformity;
- growing reticence on the part of several States Parties to counteract these challenges and assertions;
- actions undertaken by Russia and other States Parties to “sidestep” the Treaty by re-categorising and/or reassigning specific weapon and equipment systems to other non-applicable departments and agencies, such as Border Guards and Interior Ministry;

²⁰¹ These conventions included NATO Verification Coordinating Committee (VCC) directives, which were incorporated into various inspector checklists and aides-memoire, with corresponding guidance concerning interpretations of site access, photography, inspection equipment, briefings, denial of access, confirmation of Conventional Armaments and Equipment Subject to the Treaty (CAEST) (including “look-alike” combat vehicles converted to non-combat use), recording of serial numbers and declarations of *force majeure*.

²⁰² Department of National Defence, Strategic Joint Staff Arms Control Verification, *General Orientation Briefing*, 8 March 2010 (Ottawa: DND Canada, 2010), 32.

- general reluctance on the part of the OSCE to address specific instances of non-compliance and non-conformity, even when openly raised during formal consultative proceedings of the JCG; and
- a lack of uniformity and consistency of NATO States Parties in applying the Alliance's established interpretations of Treaty protocols and provisions.²⁰³

A particular irritant to Moscow was, and remains, the practice of NATO States Parties to refrain from inspecting one another, in keeping with separate conventions established within the Alliance. This practice served to maximise NATO States Parties' inspections of "Eastern Group" States Parties under the Treaty's passive inspection quota.²⁰⁴ WTO States Parties subsequently joining the Alliance therefore served to intensify verification inequities between the increased number of NATO States Parties, neutrals, and those remaining within the successor Russian Commonwealth of Independent States (CIS) and/or Collective Security Treaty Organisation (CSTO).²⁰⁵

Mitigating Measures

By the end of the Treaty's reduction period in November 1995, most of the now 30 States Parties had remained largely in compliance and conformity with its provisions. Applicable conventional armaments and equipment in excess of group limits were destroyed, converted, re-categorised or otherwise reduced in accordance

²⁰³ Department of National Defence, Strategic Joint Staff Arms Control Verification, *General Orientation Briefing*, 8 March 2010, 35-37.

²⁰⁴ Jane M.O. Sharp, *Striving for Military Stability in Europe, Negotiation, implementation and adaptation of the CFE Treaty*, 67.

²⁰⁵ Ottfried Nassauer, "Conventional Forces in Europe: Arms Control at Risk." *Summit Briefing Paper 97.3, Berlin Information Centre for Transatlantic Security* (1997); available from <http://www.bits.de/public/briefingpaper/bp97-3.htm>; accessed 7 February 2011, 1-2.

with provisions laid out by the Treaty. Russia, however, continued to exceed its limits in the flank zones located to the north and south of the principal central and extended zones of the defined AOA, despite having met its aggregate reductions.²⁰⁶

At the inaugural CFE Treaty Review Conference of May 1996, Russia and Ukraine advised other States Parties of problems they were encountering with Treaty-limited armaments and equipment ceilings impeding their ability to move conventional forces into internal areas of instability or crisis located within the “flanks,” such as Russia’s southern autonomous republics. Furthermore, Moscow was experiencing difficulty in relocating forces previously stationed in Central and Eastern Europe, resulting in associated ceilings being exceeded. The legally-binding *Flank Agreement to the Conventional Forces in Europe Treaty* (1997) was brokered to address this problem. By reducing the physical size of the flank zones, the Agreement rendered the extant ceilings on battle tanks and armoured combat vehicles better suited to meeting internal security and reallocation requirements. In return, Russia and Ukraine agreed to more frequent information exchanges and increased notification requirements for these sensitive areas. Moscow, which also agreed to freeze its treaty-limited armament and equipment deployments within the original flank zones, was further obliged to meet the newly prescribed limits by 31 May 1999.²⁰⁷ These adjustments notwithstanding, the “flank issue” would remain one of a number of specific sore points for Russian

²⁰⁶ Alexander Gillespie, *A History of the Laws of War: Volume 3: The Customs and Laws of War With Regards to Arms Control* (Oxford: Hart Publishing, 2011), 69-71.

²⁰⁷ Walter B. Slocombe, “CFE Flank Agreement: Enhancing U.S. and European Security,” *U.S. Foreign Policy Agenda* Volume 2 (August 1997): 15-18.

authorities, who would continue to argue the fundamental unfairness of these and other imposed restrictions.²⁰⁸

At the 1996 OSCE Lisbon Summit, States Parties agreed to commence a new round of talks aimed at altering the Treaty in order to address inherent disparities and evolving circumstances, including the dissolution of the WTO and NATO enlargement. Dedicated negotiations on “adaptation” commenced in 1997 and continued over the next two years.²⁰⁹ During this period, the Treaty’s integrity continued to be tested. A United States government report stated that Russia, Ukraine, Belarus, Armenia and Azerbaijan were not in full compliance with the Treaty, with contraventions ranging from excessive holdings of Treaty-limited armaments and equipment to denying full access during verification inspections. The report concluded that these contraventions were not “militarily significant,” and that Russia and Ukraine, with the largest holdings of the Eastern Group of States Parties, remained within their overall limits.²¹⁰ Nevertheless, Russian equipment holdings in the southern flank zone continued to exceed re-established limits²¹¹ -- a situation compounded by Moscow’s second military campaign in the Chechen Republic.²¹² As the talks progressed, other key issues would ultimately bear impact upon the adaptation process. From NATO’s perspective, the first issue concerned Russian military forces stationed in Georgia, the numbers of which exceeded those authorised by the Georgian government. The other was the continued

²⁰⁸ Department of National Defence, Strategic Joint Staff, *Briefing Note for the Chief of the Defence Staff – Update on Russian Suspension of CFE Treaty Compliance* (CONFIDENTIAL - Declassified) (Ottawa: DND Canada, 2008), 2.

²⁰⁹ Organisation for Security and Cooperation in Europe, *Lisbon Document 1996* (Lisbon: Organisation for Security and Cooperation in Europe, 1996), 5.

²¹⁰ Wade Boese, “CFE Compliance Report Issued; Treaty Adaptation Talks Continue,” *Arms Control Today* 1 June 1998 [journal on-line]; available from https://www.armscontrol.org/act/1998_06-07/cfejj98; Internet; accessed 10 July 2015, n.p.

²¹¹ Jakub M. Godzimirski, “Russia and the OSCE: From high expectations to denial?” In *The Multilateral Dimension in Russian Foreign Policy*, ed. Elana Wilson Rowe and Stina Torjesen (Milton Park, Routledge, 2009), 134.

²¹² Jakub M. Godzimirski, “Russia and the OSCE: From high expectations to denial?” 129.

Russian military presence in Moldova that lacked the explicit agreement of the Moldovan government.²¹³ From Moscow's perspective, the fundamental unfairness of the CFE Treaty had been significantly exacerbated by NATO enlargement, NATO's military campaign in Kosovo, and United States ballistic missile defence initiatives, particularly those involving the installation of system components in Europe.²¹⁴

These issues reinforced the imperative in working out suitable compromises, which eventually led to the *Final Act of the Conference of the States Parties to the CFE Treaty*, which was signed at the OSCE Summit in Istanbul in 1999.²¹⁵ In a series of politically-binding obligations specified in 14 Annexes to the Act, as well as the *Istanbul Summit Declaration* (commonly referred to as the "Istanbul Commitments"), Russia committed to withdrawing its military forces from Moldova; reducing its stationed forces in Georgia and determining their future status in accordance with the government of Georgia's wishes; fulfilling its flank zone commitments; and exercising restraint in military deployments to Russian oblasts adjacent to the Baltic States. Central European states committed to modify their Adapted CFE Treaty territorial ceilings.²¹⁶ To wit:

The act included a politically binding agreement with Russia stating that they will exercise restraint in future deployments to the Kaliningrad and Pskov oblasts, bordering the Baltic States, as well as a commitment on the part of numerous central European states to adjust their Adapted CFE territorial

²¹³ Ibid, 129-130.

²¹⁴ Jeffrey D. McCausland, "Conventional Weapons, Arms Control and Strategic Security in Europe," 279.

²¹⁵ Organisation for Security and Cooperation in Europe, *Final Act of the Conference of the States Parties to the Treaty on Conventional Armed Forces In Europe* 19 November 1999 (Istanbul: Organisation for Security and Cooperation in Europe, 1999).

²¹⁶ Jeffrey D. McCausland, "Conventional Weapons, Arms Control and Strategic Security in Europe," 278.

ceilings, and, finally, between Georgia and Russia, and Moldova and Russia, on the withdrawal of Russian TLE from their respective territories.²¹⁷

Most importantly, the 30 States Parties also signed the *Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe*.²¹⁸ This “Adapted CFE Treaty” was a significant undertaking to alter the CFE regime in order to accommodate the rapid changes of its attendant security environment, as well as stem growing dissonance. Foremost were the modifications made in response to Moscow’s repeated remonstrations over the disparity of the Treaty’s bloc-to-bloc orientation, given the dissolution of the Soviet Union and WTO. Accordingly, the regime’s parameters were modified to better reflect the post-Soviet security dynamic. This entailed altering the previous orientation and zoned geographic delineations, to a system of national and territorial ceilings that also entailed further reductions in conventional armaments and equipment. Treaty adaptation would also serve to “level the playing field” between NATO, and Eastern States Parties in terms of holding ratios, largely through NATO voluntarily reducing a larger overall percentage of its existing Treaty-limited armaments and equipment. All signatories accepted this new structure of limitations, which also included national and territorial ceilings accounting for host nation consent for the presence of foreign-stationed forces. The Adapted CFE Treaty also included increased quotas for mandatory declared site inspections, added provisions to permit ceilings to be temporarily exceeded and specific provisions for accession.²¹⁹ Other modifications

²¹⁷ United States, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, “Conventional Armed Forces in Europe (CFE) Treaty: Executive Summary.” *Treaty Compliance. ACQ Web* [journal-on-line]; available from <http://www.acq.osd.mil/tc/treaties/cfe/execsum.htm>; Internet; accessed 3 December 2012, 1.

²¹⁸ Organisation for Security and Cooperation in Europe. *Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe* (Istanbul: Organisation for Security and Cooperation in Europe, 1999).

²¹⁹ Jeffrey D. McCausland, “Conventional Weapons, Arms Control and Strategic Security in Europe,” 278.

included revised weapon and equipment system categorizations and a more transparent system of notification.²²⁰

Adversity and Disdain

Following the Istanbul Summit, Russia, Belarus and Ukraine moved quickly to enable the transition to the Adapted Treaty. Belarus and Ukraine ratified the Agreement on Adaptation in 2000, while Russia -- now under the President Vladimir Putin's tenacious authority -- immediately undertook to fulfil its original pledge to reduce 14,500 pieces of conventional armaments and equipment located east of the AOA. Undertaken together with Kazakhstan, this longstanding commitment was completed by mid-2003. Kazakhstan's ratification of the Adapted Treaty was completed in 2003. Russian ratification was completed at end of 2004, following the accession of seven new NATO states that year.²²¹

As might be expected, the 2001 CFE Treaty Review Conference, held at OSCE Headquarters in Vienna, was duly focused upon preparations for the entry-into-force of the Adapted CFE Treaty. Nevertheless, various on-going issues associated with the implementation of the existing Treaty were noted. These included complications arising from unaccounted and uncontrolled TLE within the AOA, along with Russia's

²²⁰ Michael D. Miggins, *Conventional Arms Control and Its Contribution to European Security and Stability. Briefing to NATO Senior Officer Course 10 February 2005* (Brussels: North Atlantic Treaty Organisation, 2005), 17-18.

²²¹ Zdzislaw Lachowski, "The CFE Treaty One Year After its Suspension: A Forlorn Treaty?" *SIPRI Policy Brief*. January 2009 (Solna: Stockholm International Peace Research Institute, 2009), 2.

continued non-compliance with flank provisions.²²² Others issues were more fundamental, but nevertheless critical to the viability of the Treaty

- specified limitations and related Treaty obligations;
- interpretation of Treaty counting rules;
- notifications and exchange of information; and
- verification, including specific issues that had arisen during inspections.²²³

Acknowledging the reaffirmation made by States Parties, the Review Conference's concluding document clearly stated that ratification of the Agreement on Adaptation by NATO and other States Parties would be possible "only in the context of full and verifiable compliance with agreed levels of conventional armaments and equipment and consistent with the commitments contained in the CFE Final Act," together with "the commitments referred to in the Istanbul Summit Declaration."²²⁴

Later in 2001, Russia undertook initial withdrawals of armaments and equipment from Georgia; however, disagreements developed between Moscow and Tbilisi regarding what stationed forces would remain. Similarly, Russian forces in Moldova were in the process of withdrawing, but by the end of 2002, Moscow ceased the movement of personnel, stockpiled ammunition and equipment. Although additional

²²² Organisation for Security and Cooperation in Europe, *Formal Conclusions of the Second Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiation on Personnel Strength* (Vienna: Organisation for Security and Cooperation in Europe, 2001), 2-3.

²²³ Organisation for Security and Cooperation in Europe, *Formal Conclusions of the Second Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiation on Personnel Strength*, 2.

²²⁴ *Ibid*, 3.

steps were taken to bring itself into compliance with the Adapted Agreement in the flank zones, Russia nevertheless remained in breach of extant ceilings.²²⁵

NATO States Parties' refusal to ratify the Agreement on Adaptation as long as Russia failed to meet its stated commitments regarding its stationed forces in Moldova and Georgia, had effectively lead to a stalemate. This situation was worsened by the three Baltic States (Estonia, Latvia and Lithuania) and Slovenia -- all non-States Parties to the CFE Treaty -- joining NATO prior to their planned accession to the Adapted Treaty. Given the existing CFE Treaty's lack of an accession clause, Moscow wanted these states to adhere to CFE-like restrictions; otherwise, this would further disadvantage Russia, particularly along its western periphery.²²⁶ Accordingly, NATO's 2004 intake of these four non-States Parties, along with Bulgaria, Romania and Slovakia (members of the Eastern Group of States Parties) understandably led to Russian outcries over "strategic equity."²²⁷ In anticipation of this, NATO had provided earlier reassurances in the 1997 *Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation*:

NATO reiterates that in the current and foreseeable security environment, the Alliance will carry out its collective defense and other missions by ensuring the necessary interoperability, integration, and capability for reinforcement rather than by additional permanent stationing of substantial combat forces. Accordingly, it will have to rely on adequate infrastructure commensurate with the above tasks.²²⁸

²²⁵ Zdzislaw Lachowski, "The CFE Treaty One Year After its Suspension: A Forlorn Treaty?" 2.

²²⁶ Ibid, 3.

²²⁷ Ibid, 3.

²²⁸ North Atlantic Treaty Organisation, *Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation* (Paris: North Atlantic Treaty Organisation, 1997), 14.

Moscow nevertheless denounced NATO's expanding membership, particularly that of non-CFE States Parties, as something that would only serve to further handicap Russia in terms of comparative conventional armaments and equipment:

... neither NATO nor the Baltic states have adequately addressed the Kremlin's concerns over the future of the Treaty on Conventional Armed Forces in Europe, or CFE, which the Baltic states have not signed. Defense Minister Sergei Ivanov recently dubbed the situation a "legal black hole." The lack of dialogue has only roused the suspicions of Russian generals, who recently conducted a series of large-scale war games in Kaliningrad.... Clearly, top military brass are convinced that NATO will expand eastward, but remain extremely skeptical that expansion will entail anything other than increased regional tension.²²⁹

While continuing to publically oppose what it regarded as growing threats to its national interests, Moscow nevertheless undertook specific actions to mitigate these circumstances. This included an agreement reached with Georgia in 2005 on the withdrawal of its stationed forces in Georgia, which was to be completed by 2008.²³⁰ In addition, a Russian proposal was made at the 2006 CFE Treaty Review Conference to provisionally implement the Adapted CFE Treaty, but NATO States Parties rejected this.²³¹ Additionally, in a 2007 response to United States ballistic missile defence emplacements planned for Europe, President Putin offered the shared use of Russia's Gabala ballistic missile early warning radar in Azerbaijan as an alternative to the United States building a new system in the Czech Republic. Putin also proposed increased partnership with European states in collaborative missile defence, along with

²²⁹ Samuel Charap, "Russia, Kaliningrad and NATO," *The Moscow Times*, 13 August 2002, 1.

²³⁰ Zdzislaw Lachowski, "The CFE Treaty One Year After its Suspension: A Forlorn Treaty?" 2.

²³¹ Ministry of Foreign Affairs, *Press Release Outcome of Third Review Conference of Treaty on Conventional Armed Forces in Europe (CFE Treaty)*, 5 June 2006 (Moscow: Ministry of Foreign Affairs of the Russian Federation, 2006), n.p.

alternatives to the emplacement of intercept missiles in Central Europe. These proposals were also declined.²³²

Putin's growing impatience with the lack of progress on the Adapted CFE Treaty, the OSCE and his general dissatisfaction with security developments in general, were conveyed in an address made at the Munich Conference on Security Policy on 12 February 2007:

People are trying to transform the OSCE into a vulgar instrument designed to promote the foreign policy interests of one or a group of countries. And this task is also being accomplished by the OSCE's bureaucratic apparatus which is absolutely not connected with the state founders in any way. ...The Adapted Treaty on Conventional Armed Forces in Europe was signed in 1999. It took into account a new geopolitical reality, namely the elimination of the Warsaw bloc. ...NATO countries openly declared that they will not ratify this treaty, including the provisions on flank restrictions (on deploying a certain number of armed forces in the flank zones), until Russia removed its military bases from Georgia and Moldova. Our army is leaving Georgia, even according to an accelerated schedule. We resolved the problems we had with our Georgian colleagues, as everybody knows. There are still 1,500 servicemen in Moldova that are carrying out peacekeeping operations and protecting warehouses with ammunition left over from Soviet times. ...It turns out that NATO has put its frontline forces on our borders, and we continue to strictly fulfil the treaty obligations and do not react to these actions at all. I think it is obvious that NATO expansion does not have any relation with the modernisation of the Alliance itself or with ensuring security in Europe. On the contrary, it represents a serious provocation that reduces the level of mutual trust.²³³

²³² USA Today, "Russia warns U.S. on missile defense," *USA Today*, 21 June 2007.

²³³ Washington Post, "Putin's Prepared Remarks at 43rd Munich Conference on Security Policy," *Washington Post*, 12 February 2007, n.p.

The weeks and months following the Munich address were notably tense. In his annual address to the Russian Federal Assembly on 26 April 2007, Putin announced his intention to impose a moratorium on Russian implementation of the CFE Treaty until all NATO members ratified the Agreement on Adaptation and started observing its provisions, as Russia had already been doing on a unilateral basis.²³⁴ Putin's address included the now well-established argument that an expanding NATO, including members that were not States Parties to the Treaty, had created an imbalance in conventional armaments and therefore, a specific threat to Russia. Associated comments by Russian Foreign Minister Sergei Lavrov included assertions that Moscow's political commitments made at Istanbul had been largely fulfilled in terms of their relevance to the Treaty and that continued linkages made by NATO were essentially spurious.²³⁵

At the June 2007 Extraordinary CFE Conference in Vienna, called by Moscow under the Treaty's provisions, the head of the Russian delegation, Ambassador Anatoly Antonov, called for immediate steps to resolve these escalating issues. Antonov reiterated Moscow's warning that Russia would move to unilaterally suspend the Treaty's validity unless NATO members undertook the necessary actions to enable the Adapted Treaty's entry-into-force by July 1, 2008, or at least comply with its provisional implementation. Antonov also indicated that, given developments since

²³⁴ Kremlin Archive. *Annual Address to the Federal Assembly* (26 April 2007) [journal on-line]; available from http://archive.kremlin.ru/eng/speeches/2007/04/26/1209_type70029type82912_125670.shtml; Internet; accessed 22 July 2015, n.p.

²³⁵ Ministry of Foreign Affairs. *Statement by Mr. Sergei Lavrov, Minister of Foreign Affairs of the Russian Federation, at the Fifteenth Meeting of the OSCE Ministerial Council*, 29 November 2007 (Madrid: Foreign Ministry of the Russian Federation, 2007), 3-4.

1999, the Adapted CFE Treaty would require renegotiation and amendment as soon as it entered-into-force; that is, “an adaptation of the Adapted CFE Treaty.”²³⁶

During the conference, specific Russian proposals included the abolition of the flank arrangements for Russia; the entering-into-force of the adapted CFE Treaty by 1 July 2008; and the reduction of NATO Treaty ceilings “to compensate for the military potential acquired by the alliance as a result of its two waves of enlargement.” Russian officials also demanded that the CFE regime be immediately extended to NATO members Estonia, Latvia and Lithuania, along with agreement on a formal definition of “substantial combat forces.”²³⁷ These imperatives included inferences that NATO’s expanded membership had resulted in its own ceilings being exceeded, which was becoming further compounded by plans to establish new American bases in Bulgaria and Romania. According to Antonov, the Russian proposals were a reflection of geopolitical changes that had occurred since the dissolution of the WTO and should be regarded as “a kind of roadmap that is necessary to revive the practicability of the CFE Treaty.”²³⁸

The conference ended without any change in NATO States Parties’ position on Russia’s fulfilment of its Istanbul Commitments. Indeed, on the last day of the conference, following an extended oratory of Russian grievances, a member of the United States delegation, Larry Schultz, tersely responded: “fulfil your obligations!”²³⁹

²³⁶ Jean-Christophe Peuch, “Russia: Moscow Unhappy with Outcome of CFE Conference,” *Radio Free Europe*, 15 June 2007 [journal on-line]; available from <http://www.rferl.org/content/article/1077157.html>; Internet; accessed 22 April 2015, n.p.

²³⁷ Jean-Christophe Peuch, “Russia: Moscow Unhappy with Outcome of CFE Conference,” n.p.

²³⁸ Ibid, n.p.

²³⁹ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, Extraordinary Conference of the States Parties to the CFE Treaty, 12-15 June 2007* (Ottawa: DND Canada, 2007), n.p.

As a result of this impasse, the Russian Federation's self-imposed "suspension" of its extant CFE Treaty obligations took effect on 12 December 2007. Highly contentious, the suspension was and remains an act for which no valid legal provision exists, given that the only option available to a State Party other than full implementation is its withdrawal, in accordance with the provisions contained in Article XIX:

1. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardised its supreme interests. A State Party intending to withdraw shall give notice of its decision to do so to the Depository and to all other States Parties. Such notice shall be given at least 150 days prior to the intended withdrawal from this Treaty. It shall include a statement of the extraordinary events the State Party regards as having jeopardised its supreme interests. 3. Each State Party shall, in particular, in exercising its national sovereignty, have the right to withdraw from this Treaty if another State Party increases its holdings in battle tanks, armoured combat vehicles, artillery, combat aircraft or attack helicopters, as defined in Article II, which are outside the scope of the limitations of this Treaty, in such proportions as to pose an obvious threat to the balance of forces within the area of application.²⁴⁰

Russian officials have maintained that a suspension of this nature may indeed be enacted, in that any State Party may take actions less than full implementation in conformity with international law, as well as Russian federal law.²⁴¹ Accordingly, Russia has since refused to accept or conduct inspections, or participate in the exchange

²⁴⁰ Conference on Security and Cooperation in Europe, *Treaty on Conventional Armed Forces in Europe*, 21-22.

²⁴¹ Kremlin Archive, *Information on the Decree "On Suspending the Russian Federation's Participation in the Treaty on Conventional Armed Forces in Europe and Related International Agreements"* (14 July 2007), [Journal-on-line]; available from: <http://www.kremlin.ru/eng/text/docs/2007/07/137839.shtml>; Internet; accessed 28 November 2012, 1.

of military data with other States Parties, as specified and legally required under the current Treaty. Moscow's representation at the JCG was, nevertheless maintained until 11 March 2015, when it terminated its participation in the Treaty entirely.²⁴²

Conciliation, Counteraction and Failure

From 2007 to 2011, various efforts were undertaken by the United States and NATO States Parties to maintain an open dialogue with Russia and seek a mutually acceptable compromise. These included a series of German-sponsored informal discussions; several United States-Russia bilateral consultations, and NATO-initiated CFE "at 36" negotiations, in which the 30 CFE Treaty States Parties, plus the six new NATO member states not party to the Treaty (Albania, Croatia, Estonia, Latvia, Lithuania, and Slovenia) attempted to secure "a new framework for negotiations on strengthening and modernizing conventional arms control in Europe."²⁴³ Also during this period, a "parallel action plan" formulated by the United States, envisioned NATO signatories to the Adapted Treaty "stepping up" their national ratification processes in return for Russia concurrently resuming its military withdrawals from Georgia and Moldova. NATO States Parties also conveyed their willingness to address outstanding Russian concerns once the Adapted Treaty was in place.²⁴⁴ Although Moscow was

²⁴² Sputnik International, "Russia Completely Withdraws from Conventional Armed Forces in Europe Treaty," *Sputnik International*, 10 March 2015 [journal on-line]; available from <http://sputniknews.com/politics/20150310/1019309874.html>; Internet; accessed 22 April 2015.

²⁴³ Wolfgang Zellner, "Conventional Arms Control in Europe: Is there a Last Chance?" *Arms Control Today* (March 2012) [journal-on-line]; available from www.armscontrol.org/act/2012_03/Conventional_Arms_Control_in_Europe_Is_There_a_Last_Chance#4 March 2012; Internet; accessed 18 April 2012, n.p.

²⁴⁴ Jeffrey D. McCausland, "Conventional Weapons, Arms Control and Strategic Security in Europe," 280.

reported to have demonstrated “new flexibility on key issues,” none of these consultations were successful.²⁴⁵

Major sticking points in these negotiations included the established requirement for a host nation’s consent to stationed military forces, along with the term “internationally recognized borders.” These related to the continued presence of Russian military forces within the territories of Georgia and Moldova, along with Moscow’s recognition of Georgia’s Abkhazia and South Ossetia regions as independent states following Russia’s 2008 conflict with Georgia. By mid-2011, Russian Deputy Foreign Minister Aleksandr Grushko declared these negotiations to have arrived at an “impasse,” blaming Western States Parties.²⁴⁶ Indeed, Moscow’s position became only further entrenched, sticking to variations of the demands it had previously conveyed. These included those articulated by Ambassador Antonov, his senior arms control delegate Mikhail Ulyanov and Lieutenant-General Evgeny Buzhinsky (Head of the International Treaty Directorate, Ministry of Defence), at Bad Saarow, Germany, in the fall of 2007; namely:

- immediate ratification and entry-into-force of the Adapted CFE Treaty;
- Estonia, Latvia, Lithuania and Slovenia signing the ratified Adapted Treaty;
- new group limits imposed upon NATO armaments and equipment to compensate Russia for NATO enlargement and US military deployments;

²⁴⁵ Department of State, *Condition (5) (C) Report. Compliance with the Treaty on Conventional Armed Forces in Europe. August 2011* (Washington: United States Department of State, 2011), 12.

²⁴⁶ Jeffrey D. McCausland, “Conventional Weapons, Arms Control and Strategic Security in Europe,” 281-282.

- adjustments to Treaty-limited force ceilings in Romania and Bulgaria, commensurate with new American facilities in those countries;
- ceilings on Russian forces in designated Flank Zones “lifted” as further compensation to Russia; and
- re-negotiation and modernization of the Adapted CFE Treaty undertaken as soon as it enters-into-force.²⁴⁷

The Russian Foreign Ministry subsequently intimated that the consequences of the suspension included the discarding of Treaty-imposed limits to the numbers and location of Russia’s conventional forces throughout the AOA. While outright remilitarization has not since occurred (which some would suggest to be more a function of limited Russian capacity), the situation has nevertheless grown increasingly serious, given that the suspension has afforded Moscow considerable autonomy in modifying and employing its conventional military forces. This is a particular concern within not only the flank zones, but also with respect to conflict and other sensitive areas, including: the build-up of forces along Russia’s southern borders in the Caucasus and its western borders with NATO states; its reinforced standing military presence in Georgia and Moldova; and major deployments in support of the conflict with Georgia in 2008 and Ukraine in 2014. It is therefore evident that the suspension has facilitated Russia’s self-legitimised efforts to attain and secure unconstrained freedom of action throughout its territorial periphery and former Soviet republics (that is, its defined Near Abroad) consistent with its National Security Strategy.²⁴⁸

²⁴⁷ Department of National Defence, Strategic Joint Staff Arms Control Verification. *Conference Notes, Bad Saarow, 30 September – 3 October 2007* (Ottawa: DND Canada, 2007), n.p.

²⁴⁸ Department of National Defence, Strategic Joint Staff, *Issue Synopsis – Update on Russian Suspension of CFE Treaty Compliance*, 1-2.

NATO's response to the Russian suspension has remained measured, if not muted; i.e., acknowledging Russian concerns, while emphasising the need to preserve the regime. This has contrasted somewhat with the Alliance's initial strong disagreement with Russia's interpretation of the legal basis of the suspension, publicly reaffirming the right of States Parties "to take any steps provided for by the Treaty and international law." Accordingly, Allied States Parties have continued to meet their Treaty obligations "without prejudice to any future action," despite the pressure generated by some to formally cite the Russian Federation for legal non-compliance.²⁴⁹ Otherwise, NATO has maintained its emphasis on the negative effect the suspension has had upon the Treaty, regularly urging the Russian Federation to rescind its decision. In a 28 March 2008 statement, former NATO Secretary General Jaap de Hoop Scheffer warned that the suspension risked "eroding the integrity of the CFE regime," but added that the Alliance would retain its current position as long as both NATO and Russia continued to support a revised version of the CFE Treaty.²⁵⁰ For the following four years, NATO and other State Parties continued to "challenge" the Russian suspension by repeatedly transmitting, via the OSCE Communications Network, formal inspection and evaluation requests to Moscow – all of which were flatly refused.²⁵¹

Despite NATO and other States Parties' objections and to a lesser extent, those of the OSCE itself, Russian authorities have held firm on the suspension decision. In a statement following the NATO-Russia Council meeting of 4 April 2008, Putin (now

²⁴⁹ Department of National Defence, Strategic Joint Staff, *Briefing Note for the Chief of the Defence Staff – Update on Russian Suspension of CFE Treaty Compliance*, 2-3.

²⁵⁰ North Atlantic Treaty Organisation, *Statement by the North Atlantic Council on the Treaty on Conventional Armed Forces in Europe* (28 March 2008) [journal-on-line]; available from http://www.nato.int/cps/fr/SID-D2F0BC23-78E3EFD2/natolive/official_texts_8439.htm?bInSublanguage=true&selectedLocale=ru&submit=select; Internet; accessed 30 December 2012, 2.

²⁵¹ Department of State, *Condition (5) (C) Report. Compliance with the Treaty on Conventional Armed Forces in Europe. January 2013* (Washington: United States Department of State, 2013), 7.

Russian Prime Minister) argued that no legal link existed between Adapted CFE Treaty ratification and the Istanbul Commitments, further describing the crisis surrounding the CFE Treaty as “one of the serious obstacles to improving NATO-Russian relations.”²⁵² As a further demonstration of its resolve, other than a few generalised synopses initially provided, Russia has exempted itself from the Annual Exchange of Military Information, which provides the essential data compiled by Canada and the United States as the Data Responsible Nations for the Russian Federation and used by States Parties to determine inspection quotas and verify compliance throughout the year. Accordingly, given the absence of valid data for the largest holder of conventional armaments and equipment within the AOA, the CFE Treaty database has significantly degraded since the suspension, clearly impeding and undermining the regime.²⁵³

It is also worth noting that, as a means of offsetting the effects of the suspension on its own verification programme, the Russian Federation correspondingly increased its inspection and evaluation operations conducted under the Vienna Document. For example, within the first four months of the 2008 implementation year (coincident with the calendar year), the National Nuclear Risk Reduction Centre (Russia’s verification organisation) had already completed no less than 27 uncoordinated Specified Area inspections and unit evaluations, effectively flooding the Vienna Document 1999’s annual passive (received) quota of two inspections and one evaluation for each of the

²⁵² Wade Boese, “Russia Unflinching on CFE Treaty Suspension,” *Arms Control Today* (May 2008) [journal-on-line]; available from <http://www.armscontrol.org/print/2985>; Internet; accessed 30 December 2011, 1.

²⁵³ Department of National Defence, Strategic Joint Staff, *Briefing Note for the Chief of the Defence Staff – Update on Russian Suspension of CFE Treaty Compliance*, 3-4.

participating States located within the Document's zone of application, significantly restricting inspection/evaluation opportunities for NATO participating States.²⁵⁴

On 5 June 2008, in an evident effort to supplant the Treaty and advance Russia's security interests, President Dmitry Medvedev proposed an entirely new, legally-binding "pan-European security pact." As envisioned by Medvedev, European states would be exclusively called upon to form an all-European organization, akin to the OSCE, that would "conclusively clarify the role of the use of force in the Euro-Atlantic community." Furthermore, while existing organizations (presumably NATO and CSTO) would also be eligible for membership as distinct signatories to the pact, they would not be permitted to participate in associated negotiations. In presenting his proposal, Medvedev notably added that NATO enlargement would damage relations "for a long time to come," advising the Alliance to take a "time-out."²⁵⁵

The Medvedev proposal and its subsequent variations are, for all intents and purposes, updates of the Soviet-era initiative intended to advantage Russia within the European geopolitical decision-making process. In its current context, this means marginalising the United States and NATO, "reforming" the OSCE (where Russia aims to consolidate its influence as the principle European actor), and establishing a series of bilateral security arrangements with select European governments. As proposed, such an accord would, in effect, result in NATO subjecting itself to external vetoes and various other binding constraints. Moreover, it would imply formal international

²⁵⁴ Department of National Defence, *Issue Synopsis for the Chief of the Defence Staff – Update on Russian Suspension of CFE Treaty Compliance*, 1-2.

²⁵⁵ Kremlin Archive. *Speech at Meeting with German Political, Parliamentary and Civic Leaders* (5 June 2008) [journal-on-line]; available from: http://archive.kremlin.ru/eng/speeches/2008/06/05/2203_type82912type82914_type84779_202153.shtml; Internet; accessed 28 November 2012, n.p.

recognition of the CSTO on a par with NATO -- a goal that Moscow has long sought, but not attained.²⁵⁶

Given the specificity of the CFE Treaty's withdrawal provisions, along with NATO and individual States Parties' early challenges to Russia's suspension, it is bewildering that, over time, no formal responsive action has been initiated to hold Moscow more fully to account, such as a request for a ruling or even an opinion, by an independent arbiter, such as the International Court of Justice. Similarly, no action -- executive, secretarial or otherwise -- has been undertaken by the consensus-based JCG, other than to duly note these actions, express regret, encourage a return to full compliance and otherwise provide a forum for continued consultation. Clearly, this passive approach has undermined the Treaty's fundamental integrity. Using violations of arms control agreements to illustrate cooperation theory, Robert Axelrod states that the longer a "defection" (i.e., violation) is allowed to go unchallenged, the more likely it is that the offender will determine that such action is worthwhile. This underscores the need to detect and address violations quickly; i.e., "...it is better to be provokable sooner, rather than later. By responding right away, it gives the quickest possible feedback that defection will not pay."²⁵⁷

Without question, the wait and see approach taken by the OSCE, NATO and neutral States Parties in response to the suspension has worked to Russia's advantage. It also justifies any assumption made by Moscow of insufficient provocability existing to formally challenge the suspension. That is, the Kremlin correctly assessed that it

²⁵⁶ Marcel H. Van Herpen, "Medvedev's Proposal for a Pan-European Security Pact. Its Six Hidden Objectives and How the West Should Respond," *Cicero Working Paper WP 08 – 03*, (Oslo: Cicero, 2008), 1.

²⁵⁷ Robert Axelrod, *The Evolution of Cooperation*, (New York: Basic Books, 1984), 185.

would be able to walk away from the Treaty without formally withdrawing -- despite Article XIX's explicit provisions -- thereby sidestepping its obligations and avoiding the blame that it would have otherwise received for quitting outright. While clearly benefitting Russia, the resultant damage to the integrity of the regime and its underlying principles is self-evident.

While debate concerning the legitimacy of the suspension has been extensive, it is apparent that Article XIX's particulars should have provided more than sufficient justification to challenge, with effect, Russia's de facto abrogation of its legally-binding obligations. As noted by Adam Collicelli:

Both international legal scholars and international relations theorists have long focused on what is involved in entering into treaties, but have generally ignored careful studies of treaty exit. Russia's unilateral and potentially unlawful suspension of the CFE Treaty is a reminder of how crucial this portion of treaty law can be. The CFE Treaty does not explicitly authorize suspension. The Vienna Convention [on the Law of Treaties] does not convincingly provide for any other justification for the suspension and Putin did not attempt to invoke one. Thus, Russia's suspension likely violated the CFE Treaty.²⁵⁸

The JCG's impassiveness, along with that of individual States Parties, while presumably intended to give Russia every opportunity to end its suspension through conciliation, only served to reinforce Moscow's intransigence and further undermine the Treaty. Indeed, the ramifications of failing to formally challenge Russia's suspension was perhaps most poignantly illustrated at the Fourth CFE Treaty Review Conference, held in November 2011 in Vienna. During this overall downcast affair, the United

²⁵⁸ Adam Collicelli, "Frozen Obligations: Russia's Suspension of the CFE Treaty as a Potential Violation of International Law," (*Boston College International and Comparative Law Review*, Volume 2, Issue 2, Article 11 (2009)): 351-352.

States, along with several other NATO and neutral States Parties, each formally announced the imposition of countermeasures with respect to the Russian Federation. These measures entailed Russia's exclusion from exchanged military data, along with the Protocol on Inspection, pending Moscow's resumption of its legally-binding obligations.²⁵⁹ Given the presumption of collaboration within the Eastern Group of States Parties, the United States also asserted that the sharing of exchanged military information with the Russian Federation should be considered a violation of the Treaty, given that such data should only be provided to active, vice suspended parties.²⁶⁰

The countermeasures announcements were acknowledged by the lead Russian representative, Ambassador Mikhail Ulyanov, who further noted that they merely served to formally recognize and validate the legitimacy of Russia's suspension under international law.²⁶¹ It would appear that Ulyanov's response had merit, given that both the suspension and subsequent countermeasures are based upon more general precepts of international conventional law, rather than the very specific provisions of the Treaty itself. Indeed, both actions call into question the fundamental basis of legally-binding international agreements, given that both purposely deviate from explicit corresponding provisions. In this regard, the countermeasures undertaken by the United States and several other States Parties in response to Russia's de facto material breach may appear justifiable under the *Vienna Convention on the Law of Treaties*. However, both Russia's cessation of compliance and the subsequent countermeasures have been based upon the presumption of an implicit right of suspension, whereas under the Treaty there

²⁵⁹ Department of National Defence, Strategic Joint Staff Arms Control Verification. *Conference Notes, Fourth CFE Treaty Review Conference, 20 September 2011* (Ottawa: DND Canada, 2011), n.p.

²⁶⁰ Jeffrey D. McCausland, "Conventional Weapons, Arms Control and Strategic Security in Europe," 282.

²⁶¹ Department of National Defence, Strategic Joint Staff Arms Control Verification. *Conference Notes, Fourth CFE Treaty Review Conference, 20 September 2011*, n.p.

exists only explicit provisions for withdrawal.²⁶² Therefore, rather than responding in kind to the Russian suspension, a more appropriate response would have been a formal legal challenge and corresponding Treaty governance actions to hold Russia to account, based upon the following:

- Russia's suspension is not provided for under the provisions of the CFE Treaty and therefore constitutes a violation;
- given the CFE Treaty's specific withdrawal provisions, Russia's suspension is not justified under any corresponding provision of the Vienna Convention; and
- additional justification used by Moscow, such as that cited under Russia's 1995 Federal Law on International Treaties is invalid with respect to the Treaty and the Convention in this respect.²⁶³

Accordingly, the lack of a formal legal challenge in favour of appeasement, followed by the countermeasures imposed by several States Parties, has further obscured the suspension issue and compounded the Treaty's overall impairment. Nevertheless, it continues to be implemented amongst the other 29 States Parties. Moreover, even with Moscow's alleged encouragement to some other States Parties to follow its lead, none -- including Belarus -- have signalled any intention to similarly suspend themselves or withdraw outright.²⁶⁴ Regardless, lacking the single largest holder of conventional armaments and equipment within the AOA, the Treaty has lost much of its practical utility and relevance. This has led it to be increasingly regarded as a "Cold War anachronism," indicative of the diminishment of European conventional

²⁶² Adam Collicelli, "Frozen Obligations: Russia's Suspension of the CFE Treaty as a Potential Violation of International Law," 341.

²⁶³ Ibid, 341-346.

²⁶⁴ Department of National Defence, *Issue Synopsis for the Chief of the Defence Staff – Update on Russian Suspension of CFE Treaty Compliance*, 3.

arms control in general.²⁶⁵ Accordingly, Moscow's decision to finally end its participation in the JCG on 11 March 2015, while somewhat anticlimactic, was a suitable reminder of the consequences of the Treaty's breakdown:

In hindsight, it is clear that Russia achieved a military advantage by refusing to comply with the CFE, enabling it to deploy troops to Crimea and the Russian-Ukrainian border. That is, it could accomplish precisely what the CFE was supposed to guard against: the secret concentration of forces as a prelude to aggression. Moscow's decision to dispense with every pretense of abiding by the CFE provides further evidence that a new Cold War is rapidly approaching.... The CFE is not simply an outdated set of binding procedures as the Kremlin contends, but the embodiment of a principle. Today, Russia has rejected that principle. That leaves only one way to achieve security in Europe — military deterrence.²⁶⁶

Conclusions and Implications

The decline of the CFE Treaty illustrates the perils of non-adherence to a highly complex, legally-binding accord and the costs of failing to adequately challenge clear transgressions. Regardless of the reasons for failure -- weak institutional oversight, political indecision, intimidation, and even evasion by the OSCE/JCG and other States Parties -- they all relate to the fundamental impairment of the regime's operating model and the ramifications of such impairment. As noted by Adam Collicelli, "...the very benefits attained from engaging in international agreements will be in true jeopardy if parties can invariably deviate from those agreements and halt their responsibilities for

²⁶⁵ Anne Miles, "Conventional Arms Control After Ukraine," *Defence in Depth*, 2 March 2015 [journal on-line]; available from <http://defenceindepth.co/2015/03/02/conventional-arms-control-after-ukraine/>; Internet; accessed 10 September 2015, n.p.

²⁶⁶ Alexander Golts, "CFE Is Dead; Military Deterrence Is Back," *The Moscow Times*, 16 March 2015, n.p.

political gain.²⁶⁷ For now, Russia's defection appears to have achieved its desired effect, but to the obvious detriment of the regime and by extension, European security and stability in general.

The CFE Treaty has long passed a critical juncture. While it may continue to operate for some time at a contracted level amongst its remaining States Parties, it is clear that the regime will continue to fall well short of its intended purpose. Even if formal legal adjudication were to now rule that the Russian Federation's suspension was indeed unlawful, such a determination more than eight years after the fact would have little real impact, other than to officially characterise Moscow's actions. Increasingly emboldened, Russia's leadership can be expected to remain impudent in any related security dialogue, given that it has already demonstrated that it can do largely what it wants, with economic sanctions and traditional forms of military deterrence now appearing to constitute the only real disincentives. As such, barring some other form of compulsion, a CFE-like successor regime would likely have little, if any, interest for Moscow. Given this outcome, it is clear that by failing to maintain adequate accountabilities and tolerating major deviations from its provisions, the security assurances afforded by the CFE Treaty regime have largely collapsed, giving way to a new phase of European security underscored by antipathy, uncertainty and instability.

This case-study examination of the CFE Treaty has highlighted a number of considerations relevant to both the regime specifically and contemporary conventional arms control in general. First, the circumstances that led to the establishment of the Treaty must be regarded as singularly unique and as such, impossible to replicate. That

²⁶⁷ Adam Collicelli, "Frozen Obligations: Russia's Suspension of the CFE Treaty as a Potential Violation of International Law," 352.

is, the Treaty constitutes a one-off systematisation of collaborative behaviours derived from exceptional circumstances. Second, the successes realised during the initial reduction period were largely driven by external imperatives, with the Treaty providing commensurable regulatory and administrative “orderliness” to the exceedingly complex task of reducing conventional forces. Third, despite the uniformity that it established, the CFE Treaty has been fundamentally conflicted from the outset, with regular demonstrations of its pervasive variability and instability. Accordingly, lacking the necessary adherence to its governance-management-implementation model, the regime was arguably destined to fail from its inception, particularly given the Soviet Union’s and WTO’s unforeseen collapse and the successive challenges that followed.

It is noteworthy that, over time, major Treaty disputes had been increasingly consigned to the United States, Russia and other States Parties to tackle, with the JCG serving more as a venue than an implementing body. Indeed, throughout Moscow’s self-imposed suspension of the Treaty, the OSCE’s relative detachment has been apparent. Moreover, the on-going distractions created by the suspension have led to other implementation-related issues becoming increasingly overshadowed, further degrading the regime. Irrespective of blame, the failure to hold Russia sufficiently to account has ruinously undermined the regime’s integrity. Although the Treaty can and arguably should continue to function as is, Russia’s absence will continue to render it comparatively inconsequential. And while many of its provisions might indeed provide some basis for an alternative form of adaptation, the outcome would likely be somewhat removed from that envisioned in 1999. Nevertheless, the CFE Treaty experience will hopefully provide valuable lessons concerning the governance, management and implementation of an evolved or successor regime, should one be established.

CHAPTER 4

CASE STUDY 2: THE VIENNA DOCUMENT ON CONFIDENCE- AND SECURITY-BUILDING MEASURES

Introduction

In keeping with the established methodology of the thesis, this chapter entails a case study examination of the *Vienna Document on Confidence- and Security-Building Measures* (commonly known as the Vienna Document), to include its purpose, structure, means of application and related developments contributing to its overall degradation. Specific events associated with the regime's oversight and implementation -- from its entry-into-force to Russia's 2014 annexation of Crimea -- will be reviewed in order to ascertain their basis and corresponding effect. Foremost of these are the Russian Federation's military resurgence and the growing incongruity of Moscow's geostrategic agenda with the Vienna Document's principles, aims and objectives. These and other events will be appraised in terms of their bearing upon this regime's declining influence as an instrument of European and Eurasian security and stability.

This examination will illustrate that, despite its variances with other regimes, the Vienna Document has been similarly impeded by numerous ambiguities and contraventions, compounded by systematic deficiencies in governance, management and implementation. This will corroborate that, notwithstanding the effects of various external influences, the diminishment of the Vienna Document regime can also be fundamentally attributed to faults in its rudimentary operation. Moreover, the sources of these faults have been largely overlooked in the regime's practical oversight, as well

as in associated academic research and analysis that have more typically focused upon symptoms rather than root causes. Left unresolved, these underlying failings will continue to vitiate not only the Vienna Document, but further undermine the broader conventional arms control and CSBM framework.

Backdrop

As previously discussed, the Vienna Document is a politically-binding accord designed to build mutual trust and confidence through increased openness and transparency. Separate and distinct from, but complementary to, the CFE and Open Skies Treaties, the Vienna Document was specifically conceived to reduce ambiguity and misunderstanding between states, while also serving to restore and reinforce security and stability during times of increased tension or conflict. A principal instrument of its governing institution, the OSCE, the Vienna Document has proven itself as a vital adjunct mechanism of conventional arms control. Its systematised CSBM are described by Jeffery A. Larson as those which:

...are intended to foster transparency and trust through purposely designed cooperative measures. They help clarify states' military intentions, reduce uncertainties about potentially threatening military activities and constrain opportunities for surprise attack or coercion.²⁶⁸

Its latest iteration, the Vienna Document 2011 (adopted on 30 November 2011), constitutes a technical and procedural "update" of the preceding Vienna Documents of 1990, 1992, 1994, and 1999. Each has been iteratively modified, expanded and

²⁶⁸ Jeffrey A. Larsen "Strategic Arms Control Since World War II," in *Arms Control: History, Theory and Policy*, ed. Robert E. Williams Jr. and Paul R. Viotti (Santa Barbara: Praeger Security International, 2012), 230.

enhanced with respect to its applicability to specific military activities, verification provisions and cooperation amongst its (now 57) participating States. With the exception of Chapter II (Defence Planning), the Document's jurisdictional "zone of application" covers the entire territories and surrounding sea areas of European and Central Asian participating States (excluding Mongolia²⁶⁹) and the Russian Federation from its western border to the Ural Mountains. As has been the case since the outset, only States Parties' military forces and activities physically located and conducted within the zone of application are subject to verification. Through the Document, intrusive "right of access" area inspections and unit evaluations are conducted on short-notice, in order to verify participating States' compliance with respect to "notifiable military activities," along with the accuracy of exchanged military information. Associated protocols include the observation of certain military activities, demonstrations of new weapon and equipment systems, as well as visits to air bases and other military installations.²⁷⁰

Although in many respects less structured, more dynamic and demonstratively more readily adaptive than the CFE Treaty, the Vienna Document has nevertheless remained similarly constrained by various impediments, ranging from simple interpretive ambiguities to the deliberate misconduct of individual participating States, compounded by systematic deficiencies in the governance, management and implementation of the regime. While not formally defined, traditional "bloc-to-bloc" conventions have nevertheless been incorporated into the routine execution of Vienna Document provisions. For example, participating States that are members of NATO

²⁶⁹ Per OSCE *Ministerial Council Decision No. 2/12*, Mongolia became a participating State on 21 November 2012, with the understanding that the "zone of application for CSBMs as defined in Annex I to the Vienna Document will not extend to Mongolia's territory."

²⁷⁰ Organisation for Security and Cooperation in Europe, *Vienna Document 2011* (Vienna: Organisation for Security and Cooperation in Europe: 2011).

will not normally conduct inspections or evaluations of one another, in keeping with established internal procedures. Accordingly, given the nature of NATO expansion and the residual effects of the WTO's dissolution, the Vienna Document, even in its most recent iteration, has been similarly affected by verification quota imbalances and associated inequities, along with various other fundamental deficiencies in its practical implementation.²⁷¹

The Forum for Security Cooperation (FSC) -- a senior OSCE consultative body that addresses the military aspects of security in the OSCE area -- oversees the Vienna Document and in particular, the application of its CSBM provisions. In addition to the FSC's regular meetings, an Annual Implementation Assessment Meeting (AIAM) is held in March of each year to review the current state of implementation, discuss associated issues and render decisions concerning the status of the Vienna Document.²⁷² This meeting is normally preceded by an Annual Heads of Verification Centres Meeting, which provides implementation-specific input, including reports and recommendations concerning technical and operations-oriented matters, including those pertaining to verification, compliance and conformity.²⁷³

The Vienna Document is a significant security accord for several reasons, including its central role and standing within its governing institution, the OSCE. Specifically derived from the 1975 Helsinki Final Act, the Document constitutes the Organisation's cornerstone regime, to which all members are politically bound as

²⁷¹ Wolfgang Richter, "A new start for the Vienna Document," *OSCE Magazine* Number 4 (November 2010): 16-17.

²⁷² Department of National Defence. Strategic Joint Staff Arms Control Verification. *General Orientation Briefing, 8 March 2010* (Ottawa: DND Canada, 2010), 35.

²⁷³ Organisation for Security and Cooperation in Europe, *OSCE Factsheet. What is the Forum for Security Cooperation?* (Vienna: Organisation for Security and Cooperation in Europe, 2011), n.p.

participating States. The Helsinki Final Act's Decalogue, comprising 10 formalised principles, provides the "normative structure" under which the former Conference on Security and Cooperation in Europe (CSCE) transitioned to becoming the OSCE in 1995 and presently operates. The same cooperative values and associated objectives contained in the Helsinki Final Act also established the first detailed CSBM, which entailed the requirement for prior notification of military activities involving more than 25,000 troops.²⁷⁴ At the same time, these principles constituted the doctrinal "core" and central role of the Vienna Document as the OSCE's "regional cooperative security regime."²⁷⁵

Appropriately, the orientation, purpose and development of the Vienna Document have closely paralleled those of the OSCE itself. As the Organisation progressed from a series of consultations and multilateral agreements, the general CSBM provisions contained with the Helsinki Final Act also continued to develop. That is, while the CSCE's efforts to further improve inter-state relations and broaden the Helsinki Final Act led to the 1990 Charter of Paris (setting the foundations of the Organisation), the Conference on Disarmament in Europe (CDE) -- a CSCE subcommittee -- dedicated itself to the development and codification of expanded CSBM. The efforts of the CDE resulted in the 1986 Stockholm Document, establishing specific provisions for the observation of military activities: a key development in the contemporary evolution of arms control. Subsequent CSCE meetings, designed to

²⁷⁴ Conference on Security and Cooperation in Europe, *Final Act* (Helsinki: Conference on Security and Cooperation in Europe, 1975), 11.

²⁷⁵ United States Institute of Peace, *U.S. Training on OSCE*, Journal-on-Line; available from <http://react.usip.org/index.html>; Internet; accessed 18 November 2014, n.p.

reinforce and build upon these CSBM, ultimately led to their formal systemisation under the Vienna Document 1990.²⁷⁶

Vienna Documents 1990 and 1992

The initial iteration of a regime that would undergo a process of repeated expansion and refinement, the original Vienna Document 1990 featured a number of specifically executable provisions that were derived from the 1986 Stockholm Document. In addition to the notification of specified military activities, it also established the requirement for a verifiable annual information exchange concerning military force levels, weapon and equipment systems, deployments and national military budgets.²⁷⁷ The Vienna Document 1990 also specified a dedicated communications network, along with an annual assessment meeting (the previously noted AIAM), to provide a means of recurrent consultative appraisal within the Document's implementation calendar.²⁷⁸

Concurrent with the Vienna Document 1990 was the creation of the Conflict Prevention Centre (CPC). The CPC assists the OSCE and all participating States with regime implementation, along with other organisational functions associated with early warning, conflict prevention, crisis management and post-conflict rehabilitation. The Centre specifically facilitates political dialogue and supports OSCE field operations,

²⁷⁶ Conference on Security and Cooperation In Europe, *Vienna Document 1990 of the Negotiations on Confidence- and Security-Building Measures Convened in Accordance with the Relevant Provisions of the Concluding Document of the Vienna Meeting of the Conference on Security and Co-Operation in Europe* (Vienna: Conference on Security and Cooperation in Europe, 1990).

²⁷⁷ Jack Mendelsohn, ed. and David Grahame, *Arms Control Chronology* (Washington: The Center for Defense Information, 2002), 123.

²⁷⁸ Thomas Graham, Jr. and Damien J. LaVera, *Cornerstones of Security. Arms Control Treaties in the Nuclear Era* (Seattle: University of Washington Press, 1993), 1272-1273.

provides expert advice and analysis, monitors developments throughout the territories of participating States (comprising what is commonly referred to as the “OSCE area”) and aids in the negotiation, mediation and facilitation of efforts to prevent and resolve crises and conflicts. The CPC enables OSCE decision-making bodies and participating States to make informed decisions and develops options in response to specific challenges to regional security.²⁷⁹

As previously noted, the geopolitical vacuity resulting from the dissolution of the Soviet Union (and subsequently, Yugoslavia) had created the conditions necessary to quickly elevate the CSCE/OSCE as Europe’s foremost inter-governmental security institution, along with the Vienna Document as its principal instrument. These prevailing conditions had also enabled several additional enhancements and refinements to be quickly agreed to and formalised under the Vienna Document 1990 and subsequently, the Vienna Document 1992.²⁸⁰ Clearly, the harmonization of the political, technical and operational facets of these early iterations highlights the overarching imperative required to overcome the complexity and diversity of national and regional interests:

The participants at the 1992 CSCE Helsinki Summit adopted a Programme for Immediate Action covering *inter alia* CSBMs. ...with the aim of ‘establishing among themselves new security relations based on co-operative and common approaches to security’ The participating states strove both to improve and supplement the CSBMs and to elaborate new ones. The Vienna Document

²⁷⁹ Organisation for Security and Cooperation in Europe, *OSCE Factsheet. The OSCE Conflict Prevention Centre* (Vienna: Organisation for Security and Cooperation in Europe, 2014), n.p.

²⁸⁰ Conference on Security and Cooperation in Europe, *Vienna Document 1992 of the Negotiations on Confidence- and Security-Building Measures Convened in Accordance with the Relevant Provisions of the Concluding Document of the Vienna Meeting of the Conference on Security and Co-Operation in Europe* (Vienna: Conference on Security and Cooperation in Europe, 1992).

1992...sought to address some of the new needs and challenges of the enlarged CSCE.²⁸¹

The progress achieved by the rapid production of two successive regimes also demonstrated a common understanding of, and belief in, the Helsinki Final Act's principles as embodied by the Vienna Document -- along with the imperative to build upon this. The Vienna Document 1992, signed on 29 February 1992, added to the 1990 regime an expanded and strengthened package of CSBM. For military activities, this included reductions in established personnel thresholds (13,000 to 9,000) and main battle tanks (300 to 250) requiring prior notification.²⁸² A two-year prior notification period was also imposed for military activities of 40,000 troops/900 main battle tanks, with only one such activity permitted within a two-year timeframe by any one participating State.²⁸³ Finally, within a single year, each participating State was further limited to conducting no more than six activities involving more than 13,000 troops and 300 main battle tanks -- a particularly important provision in further lowering the thresholds of less than "army level" activity as an additional hedge against destabilization in the early post-Soviet era.²⁸⁴ The Vienna Document's zone of application was also significantly expanded beyond the extant "ATTU" (Atlantic to the Urals), to include the entire territories of Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.²⁸⁵

The unity of purpose that had been attained and embodied within the Vienna Document was denoted at the CSCE's 1994 Budapest Summit that, in addition to

²⁸¹ Zdzislaw Lachowski, *Confidence- and Security-Building Measures in the New Europe*. Sipri Research Report No. 18 (Oxford: Oxford University Press, 2004), 14-15.

²⁸² Conference on Security and Cooperation in Europe, *Vienna Document 1990*, 22.

²⁸³ Ibid, 35.

²⁸⁴ Ibid, 35.

²⁸⁵ Ibid; 53.

initiating the transition of the Conference's status to that of a permanent organization, also moved to specifically strengthen its institutions. The language of the 1994 Budapest Document typified this transition, surpassing characteristic political rhetoric and conveying a decidedly confident and assertive tone:

4. ...the participating States will base their mutual security relations upon a co-operative approach.... The participating States will co-operate in ensuring that all such security arrangements are in harmony with CSCE principles and commitments under this Code. 5. They are determined to act in solidarity if CSCE norms and commitments are violated and to facilitate concerted responses to security challenges that they may face as a result. They will consult promptly, in conformity with their CSCE responsibilities, with a participating State seeking assistance in realizing its individual or collective self-defence. They will consider jointly the nature of the threat and actions that may be required in defence of their common values.²⁸⁶

The Vienna Document regime continued to be significantly reinforced and enhanced in remarkably short order. This early momentum was indicative of the prevailing geostrategic conditions of the concluding phases of the Cold War that favoured the CSCE/OSCE generally and the Document specifically as the only regime to politically bind all member States under a “common and indivisible” vision of security. This was already evidenced by its high degree of implementation and proven comparative flexibility.

The 1994 iteration of the regime was wholly developed by the previously noted FSC. Established at the 1992 Helsinki Summit Meeting of the CSCE²⁸⁷ and presently

²⁸⁶ Conference on Security and Cooperation in Europe, *Budapest Document 1994. Towards a Genuine Partnership in a New Era*. (Budapest: Conference on Security and Cooperation in Europe, 1994), 12.

²⁸⁷ Jeffrey A. Larsen “Strategic Arms Control Since World War II,” 231.

one of the OSCE's two "main regular decision-making bodies," the FSC was created as a dedicated assembly within which to undertake regular consultations on the "politico-military dimension" of security. This included not only security dialogue of a general nature, but more intensified discussion on specific politico-military security matters, including "new stabilising measures" and targeted negotiations on CSBMs.²⁸⁸ In addition, the FSC's Support Section was assigned technical oversight the OSCE Communications Network. This network, featuring a purpose-designed Integrated Notification Application (INA), was designed to provide participating States with a "reliable, timely and secure channel for transmitting military information to supplement diplomatic channels."²⁸⁹ The network would prove critically important in enabling the means through which to fulfil the growing notification and information exchange requirements of not only the Vienna Document, but also the other regimes administered by the OSCE.

Vienna Document 1994

The Vienna Document 1994, signed on 28 November 1994, immediately superseded the Vienna Document 1992, incorporating expanded and reinforced CSBM provisions.²⁹⁰ Extant military contacts and cooperation provisions were broadened to include visits to naval bases, along with contacts between military units. Additional provisions were created for military sports and cultural exchanges, collaborative training and even the joint publication of security- and defence-related research

²⁸⁸ Organisation for Security and Cooperation in Europe, *OSCE Factsheet. What is the Forum for Security Cooperation?* n.p.

²⁸⁹ Ibid, n.p.

²⁹⁰ Conference on Security and Cooperation in Europe, *Vienna Document 1994 of the Negotiations on Confidence- and Security-Building Measures* (Vienna: Conference on Security and Cooperation in Europe, 1994).

studies.²⁹¹ Concomitant with the Vienna Document 1994 was the institution of the Global Exchange of Military Information (GEMI). A transparency measure, the GEMI broadly expanded the obligatory data provided by participating States on their armed forces, to include command structures, strength and location of forces, major weapon and equipment holdings and associated technical data.²⁹² In addition, reporting on defence planning policy, doctrine, planning, and budget (including five-year projections) were also incorporated as an annual reporting requirement.²⁹³

With the Vienna Document 1994, both the regime and its governing institution had attained an appreciable level of sophistication and rigour. With its varied revisions and enhancements, the Document now represented a more complete and balanced confidence- and security-building accord. That said, the implementation of the expanded requirements of the Vienna Document regime brought with it increased demands in overseeing all facets of its control, regulation and application. These demands were increased by unavoidable variances in the orientation and wherewithal of many of the regime's constituents (which included several former Soviet Republics) in managing their binding obligations. This was not lost by the CSCE, as noted in a corresponding Chairman's Statement, incorporated as Annex IV of the Vienna Document 1994:

It is understood that the participating States will take into consideration practical problems which may arise at an initial stage in implementing CSBMs on the territories of newly independent States admitted to the CSCE. Those States will promptly inform all the participating States about such practical problems. This

²⁹¹ Conference on Security and Cooperation in Europe, *Vienna Document 1994 of the Negotiations on Confidence- and Security-Building Measures*, 17.

²⁹² *Ibid.*, 3-9.

²⁹³ *Ibid.*, 9-15.

statement will not constitute a precedent and will be subject to review in the light of the discussion at the Annual Implementation Assessment Meeting.²⁹⁴

The AIAM was created to provide a dedicated means of recurrent consultative appraisal within the annual FSC calendar. With the establishment of the Vienna Document 1994, it had developed into an important annual gathering of national delegations to the FSC, supported by policy and operational experts from capitals. This enabled the focused review and assessment of the implementation of established CSBM, with a view to validating, correcting and adjusting provisions as part of a process of continuous improvement. Accordingly, the AIAM was and remains a rather unique annual venue, bringing all components of regime governance, management and implementation together in a single forum. With support from the CPC, discussion can be oriented towards any aspect of the regime, including the analysis and validation of agreed measures, technical and procedural clarification, and formalized interpretation.²⁹⁵

With the introduction of the Vienna Document 1994, it had already become evident that, with the ambitious expansion and reinforcement of the regime, various issues were emerging with its amenable implementation and oversight. Despite the prevailing overall harmony, inherent variances in many participating States' fundamental perceptions, interests and associated intentions were becoming increasingly problematic. Doctor Zdzislaw Lachowski, a leading arms control researcher of the Stockholm International Peace Research Institute, characterized these as the "emergence of various problems of circumvention, violation of and non-

²⁹⁴ Ibid, 48.

²⁹⁵ Conference on Security and Cooperation in Europe, *Vienna Document 1990*, 50.

compliance,” created by “different military, political and security factors and situations.”²⁹⁶ As previously indicated, these problems were particularly evident amongst former integral Soviet states in East-Central Europe, Southern Caucasus and Central Asia -- including those actively or recently engaged in conflict, such as Armenia, Azerbaijan, Moldova, Georgia and Uzbekistan -- that were adjusting to the significant shift towards the openness and transparency represented by the regime. These problems ranged from simple interpretive difficulties to specific attempts to evade detection and scrutiny of deliberate contraventions. Within this range, there existed various degrees of non-conformity and non-compliance, including those attributable to inadvertent error, the inability to comply or conform, purposeful acts, or combinations thereof. While specific details from inspection and evaluation reports are “Treaty Sensitive” or “OSCE Restricted,” they include failures in responding to inspection requests within the prescribed timelines or refusing such requests for unsubstantiated reasons. Others involve the non-provision of prescribed support (including logistical assistance) to an inspection or evaluation or the outright denial of inspection access within a previously agreed Specified Area. As specifically noted in some national reporting, infractions of this nature could be ascribed to a lack of wherewithal, insufficient resources, deliberate attempts to impede verification or a combination thereof.²⁹⁷

While these problems were becoming increasingly apparent, they remained largely overshadowed by the broad political support for the uniqueness and innovative

²⁹⁶ Zdzislaw Lachowski, “Conventional arms control agreements: issues of compliance,” in *A Future Arms Control Agenda. Proceedings of the Nobel Symposium 118, 1999*, Stockholm International Peace Research Institute, ed. Ian Anthony and Adam Daniel Rotfield (London: Oxford University Press, 2001), 228.

²⁹⁷ Department of National Defence, Strategic Joint Staff Arms Control Verification *General Orientation Briefing*, 8 March 2010 (Ottawa: DND Canada, 2010), 36.

character of the regime. Given that oversight and implementation were being conducted under generally conducive conditions, the overall success of the Vienna Document appeared self-evident and as such, somewhat assured. While buoyed by the overall common commitment and cooperation needed to sustain the Vienna Document as a viable security construct, continued violations and other infractions would nevertheless increasingly undermine what Lachowski referred to as the “fair weather conditions” under which the earlier iterations of the regime were implemented.²⁹⁸

These early instances of non-compliance and non-conformity were indeed noted within the FSC, within which there remained general agreement on the necessity to uphold the provisions of this still-novel accord. Certainly, given the politically-binding nature of the regime, along with the consensus-based functionality of its governing body, there existed the clear imperative amongst participating States to ensure that existing and adopted provisions and measures would remain clear, effective and sustained through individual and collective accountability. Accordingly, the scrutiny of issues brought before the AIAM and FSC had been, by design, purposely and necessarily inclusive, with a view to engaging them in a collective, collegial fashion:

The role of the AIAM should be to increase the efficiency of existing measures, to improve their application and to provide inspiration for the provision of new measures in the FSC. ...Proposals have been made to deal with various cases of non-compliance (e.g., preparing maps, charts, etc by the CPC in order to facilitate the analysis of data by participating states; submitting a survey to states asking them to submit missing information one month before the AIAM; offering implementation assistance from other states; and raising the issues of compliance at the FSC before the AIAM).²⁹⁹

²⁹⁸ Zdzislaw Lachowski, “Conventional arms control agreements: issues of compliance,” 235.

²⁹⁹ Zdzislaw Lachowski, *Confidence- and Security-Building Measures in the New Europe*, 30.

Nevertheless, the very nature of Vienna Document implementation (that is, inspections, evaluations and other operations/activities conducted on a state-to-state basis, rather than undertaken by the organisation as a whole) has rendered its operational methodology particularly arduous. In this regard, it has been especially important for all participating States to be sufficiently resourced and prepared to articulate their national views and hold themselves to account within the context of the Vienna Document's principles and provisions, as a matter of credibility and integrity.³⁰⁰

Indeed, credibility and integrity had proven particularly important to the validity of interventions made on various implementation issues during early proceedings of the FSC and AIAM. That is to say, there were important and distinguishable delineations between observations raised by comparatively impartial participating States, such as those with no stationed forces in a given region, as opposed to those raised between belligerents. These proceedings, which frequently involved the “naming and shaming” of offending participating States for any manner of transgression, were also highly dependent upon the FSC Chairperson (provided by each participating State on a sequential, rotational basis) in maintaining decorum, as well as providing suitable interpretive objectivity and clarity.³⁰¹ Given that the decisions rendered by CSCE/OSCE decision-making bodies were and continue to be adopted by consensus, the Chair's manner of supervision and interpretation have proven vital. The FSC is “an autonomous decision-making body,” whose mandate set in “relevant decisions” of the

³⁰⁰ Department of National Defence, Strategic Joint Staff Arms Control Verification *General Orientation Briefing*, 8 March 2010 (Ottawa: DND Canada, 2010), 37.

³⁰¹ Department of National Defence, Strategic Joint Staff Arms Control Verification *General Orientation Briefing*, 35.

CSCE/OSCE's higher authorities.³⁰² Therefore, the manner in which the Chairperson oversees proceedings has proven instrumental to not only ensuring the "good order and smooth running of meetings,"³⁰³ but to effectively enable the FSC to "implement, within its area of competence, tasks defined and decisions taken," through adoption of consensus-based determinations.³⁰⁴ Given that this process is highly dependent upon the Chairperson's individual approach to fair and equitable treatment of a given matter, his or her level of expertise, personal credibility and standard of conduct must be beyond reproach. For example, a Chairperson allowing misrepresentations or procedural deviations to occur without some form of correction or clarification would have failed to act in the interest of all participating States, bringing into question his or her impartiality as an honest broker. The same can be said in the manner the Chairperson sets the agenda for each meeting and raises issues associated with implementation of commitments. To further reinforce impartiality and neutrality in this regard, the FSC Chairperson is assisted by both the incoming and outgoing Chairpersons, forming the FSC "Troika," with the Chair itself rotating three times each year.³⁰⁵

The overall rectitude of the CSCE/OSCE in the oversight and implementation of the Vienna Document has, therefore, remained dependent upon the essential requirement to adroitly and effectively administer what Mary M. McKenzie and Peter H. Loedel refer to as the "security interdependence" of participating States. Effective administration in this regard entails the ability to sustain and reinforce a

³⁰² Organisation for Security and Cooperation in Europe, *Rules and Procedures of the Organisation for Security and Cooperation in Europe* (Vienna: Organisation for Security and Cooperation in Europe, 2006), 3.

³⁰³ Organisation for Security and Cooperation in Europe, *Rules and Procedures of the Organisation for Security and Cooperation in Europe*, 8.

³⁰⁴ *Ibid*, 3.

³⁰⁵ *Ibid*, 5-8.

universal commitment to the established normative standards of compliance and conformity required to attain the security safeguards sought. Accordingly, the integrity of the CSCE/OSCE and their constituents has remained entirely dependent upon a collective understanding of this interdependence and the requirement to uphold the regime's prescribed provisions to a common standard of "interstate behaviour."³⁰⁶ With this in mind, instances of non-compliance and/or non-conformity (i.e., violations or other infringements of specified provisions), be they deliberate, inadvertent, erroneous or otherwise, nevertheless constitute various forms of defection per Robert Axelrod, referred to earlier in this study. That is, unchecked repeated defections will establish a pattern of effrontery that will become increasingly difficult to correct, thereby progressively undermining and ultimately debilitating the integrity of the regime.³⁰⁷

Per Zdzislaw Lachowski, the "emergence of various problems of circumvention, violation of and non-compliance"³⁰⁸ of the Vienna Document in the 1990s, while not exclusive, was nevertheless largely attributable to the participating States that had devolved from the former Soviet Union:

Implementation of the Vienna Document encounters obstacles on the part of some participants which have an eroding effect on the confidence- and security-building regime. For the most part, this concerns some of the post-Soviet states with a rather poor experience in complex CSBM procedures and scant resources to meet all the requirements of compliance.³⁰⁹

³⁰⁶ Mary M. McKenzie and Peter H. Loedel, "Introduction: States and Institutions in European Security," in *The Promise and Reality of European Security Cooperation. States, Interests and Institutions*, ed. Mary M. McKenzie and Peter H. Loedel (Westport: Praeger Publishers, 1998), 12.

³⁰⁷ Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984), 6.

³⁰⁸ Zdzislaw Lachowski, "Conventional arms control agreements: issues of compliance," 228.

³⁰⁹ *Ibid.*, 235.

As previously mentioned, a number of newly independent Eastern European and Central Asian republics that had been integral components of the former “federated” Soviet Union (and therefore accounted for by Moscow internationally), were somewhat lacking in the wherewithal and resources required to fulfil their binding international obligations as participating States. While not exhaustive, these included Moldova, Uzbekistan, Turkmenistan, Kyrgyzstan, and Tajikistan.³¹⁰ While noted “obstacles” often pertained to specific observations raised in the national inspection and evaluation reports submitted by other participating States, they also included common compliance deficiencies, including annual military information exchange requirements. Infractions were broad in nature, including the failure to respond, accept and/or support inspections as planned and requested, denying freedom of movement and access where not provided for under established provisions, and otherwise impeding the verification process generally. While some exchanged information failed to meet specific reporting requirements, others missed their submission deadlines entirely.³¹¹ In addition to a presumption of participating States’ “self-correction” in response to noted observations, the FSC further sought to ensure that breaches were addressed through focused discussion and positive reinforcement within its established consultative processes, including the AIAM, as noted in the CSCE Annual Report for 1994:

The Fourth Annual Implementation Assessment Meeting (12 - 14 April 1994) once again called the attention of participating States to the problems of compliance with all obligations stemming from the Vienna Document 1992, in particular with regard to information exchange. Those problems were

³¹⁰ Department of National Defence, Strategic Joint Staff Arms Control Verification *General Orientation Briefing*, 36.

³¹¹ *Ibid*, 36.

essentially attributed to technical difficulties and inadequate knowledge of the relevant provisions.³¹²

Other mitigating measures undertaken by the CSCE included the reinforcement of provisions adopted and incorporated into the Vienna Document 1994. For example, expanded military information exchange requirements employed increasingly emphatic and assertive language to convey the imperative of compliance and conformity, along with the utilization of consultative mechanisms to fulfil requirements:

Participating States which, for whatever reason, have not exchanged annual information according to this document will during the meeting explain the reasons why and provide an expected date for their full compliance with this commitment.... In order to strengthen compliance with agreed confidence- and security-building measures and in addition to other relevant provisions of this document, the participating States will, as necessary, consider in appropriate CSCE bodies how to ensure full implementation of those measures.³¹³

Another approach to address compliance and conformity difficulties included the use of dedicated consultative and training seminars, often delivered within target countries and regions, often through the sponsorship of other participating States. Given the variances in training undertaken by individual participating States and noting specific problem areas, instruction of this nature was specifically aimed at “tailoring” Vienna Document modalities within a regional context, with due regard to local deficiencies and other concerns. One example was the “Seminar on CSBMs and Arms Control: Application and Compliance,” conducted in 1995 by the CPC in Almaty, Kazakhstan. In light of aforementioned difficulties in implementation and compliance,

³¹² Conference on Security and Cooperation in Europe, *Annual Report 1994* (Vienna: Conference on Security and Cooperation in Europe, 1994), 19.

³¹³ Conference on Security and Cooperation in Europe, *Vienna Document 1994 of the Negotiations on Confidence- and Security-Building Measures*, 42.

the seminar was focused upon imparting to officials of Central Asian participating States a better political and technical understanding of the Vienna Document 1994 and its exigencies within the broader OSCE framework.³¹⁴

Despite a steep “learning curve” for several participating States, an overall collaborative environment provided the CSCE with the needed synergy to improve the competencies required to meet the standards of regime conformity. This was increasingly facilitated by certain “lead” countries, such as Germany, the United Kingdom and the United States providing dedicated funding, facilities and/or instructional staff, often on their own initiative. This enabled the CSCE to not only enhance interactive collaboration, understanding and partnership, but also further reinforce the integrity of the institution and its CSBM agenda.³¹⁵

A key example of the importance of regime conformity and unity attained during this early period was the action taken by the CSCE in May 1992 to suspend the membership of the Former Republic of Yugoslavia (i.e., Serbia and Montenegro), resulting from its “clear, gross and uncorrected violations of CSBM commitments” in the Balkans. Yugoslavia’s traditional ally, Russia, initially objected but eventually conceded to the action, given Belgrade’s blatant aggression and the strong “push” made by the United States and other CSCE members.³¹⁶ Employing new “consensus minus one” provisions that had been instituted by the CSCE in January of that year,³¹⁷ the

³¹⁴ Organisation for Security and Cooperation in Europe, *Annual Report 1995 on OSCE Activities* (Vienna: Organisation for Security and Cooperation in Europe, 1995), 30.

³¹⁵ Department of National Defence, Strategic Joint Staff Arms Control Verification *General Orientation Briefing*, 24.

³¹⁶ Robert H. Donaldson, Joseph L. Noguee, and Vidya Nadkarni, *The Foreign Policy of Russia. Changing Systems, Enduring Interests*, Fifth Edition (Armonk: M.E. Sharpe, 2014), 236.

³¹⁷ Conference on Security and Cooperation in Europe, *Prague Document on Further Development of CSCE Institutions and Structures* (Prague: Conference on Security and Cooperation, 1992), 16.

Former Republic of Yugoslavia was effectively barred from the OSCE *without its consent*, until it was readmitted in November 2000.

This action by the CSCE aptly demonstrates that, despite the inherent limitations of consensus-based governance and management, an individual participating State could, indeed, be held to account and suitably sanctioned when there existed sufficient overarching imperative:

Its use [i.e., “consensus minus one”] was testimony to the desire of most participating states at least to appear to be doing something about the most high-profile violations of CSCE principles taking place within their own ranks.³¹⁸

Although the CSCE was able to uphold and even enforce the common standards of regime conformity to some extent, persistent variances in participating States’ capacities and cooperation would remain significant challenges to preserving the necessary accord. As such, the need to maintain robust institutional oversight and management would become increasingly urgent as security developments within the zone of application continued to transform and evolve.

The Test of Conflict

The next major test of the Vienna Document’s integrity occurred during the internal conflict between the Russian Federation and the separatist Chechen Republic of Ichkeria, commonly referred to as the First Chechen War (December 1994 - August

³¹⁸ Erika Schlager, “The Challenges of Change: An Introduction on Helsinki II,” in *The Challenges of Change: The Helsinki Summit of the CSCE and Its Aftermath*, ed. Arie Bloed (AD Dordrecht: Kluwer Academic Publishers Group, 1994), 6.

1996). When the Moscow initiated major troop and heavy aircraft movements and concentrations in support of its operations in the Chechen Republic (a federal subject of Russia) in late-1994, it did so in contravention of extant Vienna Document provisions.³¹⁹ Moscow had elected to withhold the notification of these movements, rationalising them as “non-applicable,” under the Vienna Document, given the domestic nature of the Chechen security crisis and that no other state was affected by Russian military operations. This rationalisation was noteworthy, as over time, other subjective interpretations of fundamental CSCE/OSCE principles and provisions would continue to manifest themselves -- both in discussion and practice -- and increasingly challenge the integrity of both the regime and its governing institution.³²⁰

Moscow's actions in the Chechen conflict were strongly rejected by other participating States and the CSCE/OSCE as a whole, both as a matter of technical compliance and principle. Other provisions, including those contained in the 1994 *Code of Conduct on Politico-Military Aspects of Security* concerning human rights, the laws of armed conflict, and the proportionate use of force in performing internal security missions, were also cited as having been abrogated by Russia.³²¹ Over the course of various consultations, most notably the AIAM held in April 1995, Moscow ultimately acquiesced to the overwhelming rejection of its rationale for its non-compliant actions and begrudgingly accepted the applicability of CSBM in internal security situations. This was a particular triumph for the CSCE in preserving the

³¹⁹ Conference on Security and Cooperation in Europe, *Vienna Document 1994 of the Negotiations on Confidence- and Security-Building Measures*, 20-23.

³²⁰ Zdzisław Lachowski, “Conventional arms control agreements: issues of compliance,” 235.

³²¹ Conference on Security and Cooperation in Europe, *Code of Conduct on Politico-Military Aspects of Security* (Vienna: Conference on Security and Cooperation in Europe, 1994), 3-5.

fundamental and inherent concept of security indivisibility within the Vienna Document's zone of application.³²²

The manner in which CSCE/OSCE consultative mechanisms were engaged in response to the Chechen crisis clearly proved their utility in enabling a cooperative and deferential approach to the resolution of a serious security situation. In the OSCE's *Annual Report 1995*, the AIAM was specifically noted as having developed into "a flexible tool, a useful vehicle for the development of new techniques and measures," including "questions such as the validity, practical implementation and improvement of existing measures, as well as their further development."³²³ Further, the dynamism and flexibility of the newly-transitioned OSCE in responding to the Chechen crisis was aptly demonstrated in the manner it adapted its political consultative and conflict management practices, including the establishment of an "OSCE Chechnya Assistance Group" and other OSCE efforts -- in close cooperation with Moscow -- that ultimately aided the cessation of hostilities in July 1995. As stated in the OSCE's 1995 Annual Report, "The carefully elaborated mandate of the OSCE Chechnya Assistance Group is a good example of the OSCE's - and OSCE States' - ability to adjust OSCE instruments to the specific circumstances of a given situation."³²⁴

These events notwithstanding, it is important to note that while the OSCE's conciliatory and collaborative approach in addressing the security situation in Chechnya was ultimately successful in attaining specific objectives, Moscow's actions were never censured in any way. This was indicative of not only the Organisation's characteristic

³²² Conference on Security and Cooperation in Europe, *Vienna Document 1994 of the Negotiations on Confidence- and Security-Building Measures*, 44.

³²³ Organisation for Security and Cooperation in Europe, *Annual Report 1995 on OSCE Activities*, 31.

³²⁴ *Ibid*, 8.

forbearance, but also its growing trepidation over Russian behaviour generally. This would continue to underscore the increasing tenuousness of the Vienna Document and Moscow's propensity to transgress when deemed suitable to do so. As noted by Alan S. Krass in 1997, despite the favourable outcome, "... none of this can change the fact that Russia displayed an utter disregard for its commitments under the Vienna regime in its Chechnya operation. The full implications of this incident for the regime remain to be played out."³²⁵ Accordingly, without the OSCE maintaining sufficient rigour in its overall governance and management, no amount of flexibility in responding to continued challenges of this nature would prevent the erosion of the regime's efficacy as a CSBM mechanism.

With the onset of the Second Chechen War in the fall of 1999, the Russian Federation demonstrated what could be described as an "evolved interpretation" of its obligations to, and compliance with, Vienna Document provisions. This second, 10-year conflict was again regarded by Moscow as an exclusively domestic security operation and as such, largely inapplicable to Vienna Document jurisdiction. Nevertheless, some information concerning Russian troop movements and force concentrations in the North Caucasus region was provided, along with limited updates. The universal application of CSBM provisions within the zone of application, however, remained a matter of interpretive disagreement. Moscow acknowledged that it had exceeded some of the regime's established military activity thresholds, but maintained that it had nevertheless demonstrated "exceptional goodwill and transparency" in providing the information it did, given the nature of its internal counter-terrorism

³²⁵ Allan S. Krass, *The United States and Arms Control: The Challenge of Leadership* (Wesport: Praeger Publishers, 1997), 181.

operations.³²⁶ Mindful that the Vienna Document made no distinction between domestic and international employment of military forces for notification and reporting purposes, many participating States, particularly NATO members, continued to press for Moscow's full disclosure in strict accordance with the Document's established provisions, along with its agreement to allow a specified area inspection to be conducted within Chechnya. As a result of repeated representations, Russia provided additional information on its forces engaged in operations and invited a German inspection. This was followed by a second invited inspection visit in June, involving representatives from 22 participating States. Although a number of constraints were imposed on the visit by Moscow, it did enable inspectors to directly observe Russian forces and obtain information on military forces and equipment involved in these operations.³²⁷ Nevertheless, in spite of varied individual and collective objections to Moscow's repeated non-compliance with the Vienna Document and the *Code of Conduct on Politico-Military Aspects of Security* -- including the protection of civilians and proportionate use of force -- there were, ultimately, no formal consequences. This is likely due to the OSCE and several participating States ultimately accepting Moscow's partial acquiescence as "good enough."

Despite the lessons of the First Chechen War, the universal application of CSBM provisions within the zone of application was left largely unresolved as a matter of interpretive disagreement. While the OSCE unquestionably played a key role in negotiating a peace settlement in First Chechen War in 1996 and even supervised local elections the following year, its continued collaborative approach and tolerance of

³²⁶ Zdzislaw Lachowski, "Conventional arms control agreements: issues of compliance," 237.

³²⁷ Zdzislaw Lachowski, *Confidence- and Security-Building Measures in the New Europe*, 96.

Moscow's transgressions would reap increasingly limited dividends. For example, the OSCE hailed the re-establishment of its field mission in Chechnya in 2002 as a "major breakthrough" in applying some form of practical influence, only to see Moscow simply refuse to extend its mandate the same year, with the operation terminating shortly thereafter.³²⁸ As observed by Rick Fawn, the OSCE's discerning conciliatory approach towards an increasingly emboldened Moscow had lent itself to "at least allowing, if not excusing, Russian behaviour in Chechnya," and that such an approach had created "egregious and hypocritical contradictions."³²⁹

Although the very nature of the OSCE's governing principles renders its ability to "allow" any transgression a matter of interpretation, the Chechen example nevertheless highlights an underlying incongruity between the OSCE's "flexible and adaptive" approach to security and the requirement to maintain the normative standards of its regimes. Indeed, the forbearance accorded to Russian transgressions highlights a particular vulnerability. Wolfgang Zellner, head of the Centre for OSCE Research at the University of Hamburg, acknowledges the OSCE's relative "weakness," further noting the added difficulty of dealing with Russia in comparison with other participating States: "If Russia is suspended like Yugoslavia was (1992-2000), then the OSCE would have no *raison d'être*, and then it may as well just be dissolved."³³⁰ Indeed, the *de facto* Russian "exception" represents a serious implication for not only the Vienna Document, but also the fundamental principles of conventional arms control in general.

³²⁸ Rick Fawn, *International Organizations and Internal Conditionality: Making Norms Matter* (Houndsmills: Palgrave Macmillan, 2013), 134-135.

³²⁹ Rick Fawn, *International Organizations and Internal Conditionality: Making Norms Matter*, 135.

³³⁰ Deutsche Welle, "OSCE turns 40 with a wary eye on Russia and Ukraine," *DW* [journal on-line]; available from <http://www.dw.com/en/osce-turns-40-with-a-wary-eye-on-russia-and-ukraine/a-18622146>; Internet; accessed 21 June 2015.

Another important evolution in the Vienna Document's implementation occurred during Yugoslavia's internal conflict in Kosovo (February 1998 - June 1999), which was fought by forces of the Federal Republic of Yugoslavia, (i.e., Montenegro and Serbia) and Kosovo-Albanian rebels. The rebels received support from Albanian forces and, from 24 March to 10 June 1999, air support from NATO under Operation ALLIED FORCE.³³¹

The conflict on the ground was largely characterised by its strong ethnic demarcations, numerous atrocities and the massive displacement of refugees. Equally noteworthy were the limitations of the United Nations in effectively responding to the crisis due to various constraints, but most notably the fundamental disagreements that existed between the Russian Federation and the United States.³³² The United Nations (UN) Security Council had condemned Yugoslavia's excessive use of force and imposed a largely ineffective arms embargo. Further, under *Security Council Resolution 1199*, the UN demanded the cessation of hostilities; termination of actions by security forces affecting civilians; permitting access to international monitors; facilitating the return of refugees; allowing humanitarian aid and making "rapid progress" towards finding a political solution.³³³

In their own right, these demands had had little impact on Belgrade. It wasn't until the threat of NATO intervention was diplomatically relayed by the United States Special Envoy, Richard Holbrook and the Balkans Contact Group (comprised of France,

³³¹ North Atlantic Treaty Organisation, *NATO's role in relation to the conflict in Kosovo* [journal online]; available from <http://www.nato.int/kosovo/history.htm>; Internet; accessed 17 July 2015, n.p.

³³² Michael F. Harsch, *The Power of Dependence. NATO-UN Cooperation in Crisis Management* (Oxford: Oxford University Press, 2015), 62.

³³³ United Nations Security Council, *UNSC Resolution 1199*, 23 September 1998 (New York: United Nations), n.p.

Germany, Italy, Russia, the United Kingdom and the United States)³³⁴ that Yugoslav President Slobodan Milošević ultimately agreed to Resolution 1199.³³⁵ Milošević further accepted *Security Council Resolution 1203*, establishing an OSCE monitoring mission and NATO aerial surveillance mission.³³⁶ Renewed and intensified fighting between Kosovar rebels and Yugoslav federal forces and Milošević's subsequent failure to honour the agreement resulted in NATO's decision to proceed with its air campaign as a humanitarian imperative. Moscow's disagreement with this action was largely based upon its traditional alignments with Serbia (a fellow Slavic state), similar difficulties in dealing with its own Muslim minorities, and its desire to retain its influence in Eastern Europe.³³⁷ Accordingly, as a result of Russia's formal opposition within the UN Security Council, joined by China and Brazil, Operation ALLIED FORCE -- NATO's first offensive air campaign against a sovereign state -- was undertaken without an UN Security Council mandate.³³⁸

Given these circumstances -- particularly the tenuous relationship between Russia and the United States -- the Vienna Document would prove especially useful in acquiring information, dispelling concerns, and otherwise holding NATO participating States to account regarding their execution of Operation ALLIED FORCE. During the first month of operations, in the absence of any notification of military activity, Belarus initially requested clarification of the operations being undertaken by seven participating States belonging to NATO, pursuant to Chapter II (Risk Reduction) of the

³³⁴ Joyce P. Kaufman, *NATO and the Former Yugoslavia. Crisis, Conflict, and the Atlantic Alliance* (Oxford: Roman and Littlefield, 2002), 111, 132.

³³⁵ North Atlantic Treaty Organisation, *NATO's role in relation to the conflict in Kosovo*, n.p.

³³⁶ Ibid, n.p.

³³⁷ Steven Mulvey, "World: Europe. Why Russia opposes intervention in Kosovo," *BBC News*, 13 October 1998 [journal on-line]; available from <http://news.bbc.co.uk/2/hi/europe/111585.stm>; Internet, accessed 21 June 2015.

³³⁸ Michael F. Harsch, *The Power of Dependence. NATO-UN Cooperation in Crisis Management* (Oxford: Oxford University Press, 2015), 67-68.

Vienna Document 1994. This was followed by the Former Yugoslav Republic of Macedonia (FYROM) advising all participating States in April of a concentration of forces in its territory, pursuant to Chapter IV (Prior Notification of Military Activities). In May, in conjunction with several CFE Treaty Declared Site inspections undertaken in Italy and Hungary, the Russian Federation conducted specified area inspections in the FYROM and Albania, along with submitting its own Chapter II request concerning the concentration of forces.³³⁹

Shortly thereafter in Vienna, the Russian Federation delegation to the FSC formally protested the denial of access and other constraints placed upon its inspection teams in their efforts to access NATO units in the FYROM and Albania earlier that month. This included delays and redirection to an undesignated point of entry, denial of aerial observation, denial of access to NATO military forces and equipment and non-provision of briefings, as duly specified in the Vienna Document 1994. The Russians further complained that its inspection teams had been denied access to areas and facilities where NATO formations and units were stationed, in contravention of Vienna Document provisions.³⁴⁰ Moscow also specifically cited the United States for non-compliance with extant notification and observation requirements, given that there were more than 13,000 military personnel deployed to the FYROM.³⁴¹

In their responses, Albania, the FYROM, the United States and other involved NATO participating States justified the denial of access to Russian inspectors on the

³³⁹ Michael D. Miggins, *Conventional Arms Control and Its Contribution to European Security and Stability. Briefing to NATO Senior Officer Course 10 February 2005* (Brussels: North Atlantic Treaty Organisation, 2005), 21-24.

³⁴⁰ Conference on Security and Cooperation in Europe, *Vienna Document 1994 of the Negotiations on Confidence- and Security-Building Measures*, 31-35.

³⁴¹ *Ibid.*, 20-27.

basis of safety, security and force protection reasons, given the hostile operational environment generally, and for specific “areas or sensitive points,” as provided under paragraph 78 of the Vienna Document 1994.³⁴² Additionally, the United States claimed that the purpose of its military presence in the FYROM was to provide humanitarian assistance and, unlike the Russian troop concentrations in Chechnya (constituting forces “engaged in war”), this did not fall under the same specific notification and observation criteria.³⁴³ Albania and the FYROM cited technical reasons for the non-provision of aircraft for aerial inspection. This was stated, despite the fact that under paragraph 97 of the Vienna Document 1994, Russia, as the inspecting State could specify “whether aerial inspection will be conducted using an airplane, a helicopter or both,” with the selection of the actual aircraft subject to “mutual agreement between the inspecting and receiving States.”³⁴⁴ The change in points of entry was explained as due to constraints arising from humanitarian airlift operations.³⁴⁵ Under the Document’s “Observation of Certain Military Activities” provisions,³⁴⁶ the FYROM eventually coordinated a visit to observe NATO forces and operations; however, this only occurred after Operation ALLIED FORCE had concluded.³⁴⁷

The application of the Vienna Document 1994 with respect to NATO’s Kosovo campaign demonstrates both the value and operational impact of its notification, observation, risk reduction, verification and constraining provisions. At the same time, it highlights the effects of non-compliance and non-conformity with these provisions,

³⁴² Ibid, 31.

³⁴³ Zdzislaw Lachowski, “Conventional arms control agreements: issues of compliance,” 237.

³⁴⁴ Conference on Security and Cooperation in Europe, *Vienna Document 1994 of the Negotiations on Confidence- and Security-Building Measures*, 31-35.

³⁴⁵ Zdzislaw Lachowski, “Conventional arms control agreements: issues of compliance,” 236.

³⁴⁶ Conference on Security and Cooperation in Europe, *Vienna Document 1994 of the Negotiations on Confidence- and Security-Building Measures*, 24-27.

³⁴⁷ Zdzislaw Lachowski, “Conventional arms control agreements: issues of compliance,” 236-237.

regardless of their nature (e.g., lack of understanding, misinterpretation or deliberate intent). In this instance, contraventions were rationalised in terms of either perceived inapplicability of Vienna Document provisions or presumed mitigating circumstances under which United States and the other involved Allied participating States operated. The United States, in particular, had defended its actions in denying Russian access as a matter of operational security concerning the deployment of high technology military equipment, given Moscow's close relationship with Belgrade and the likelihood of intelligence sharing. This was less of an issue for other NATO participating States, such as the British and Germans, who were more forthcoming in terms of access and information.³⁴⁸

For the United States and other NATO participating States, Operation ALLIED FORCE provided a simple but important lesson concerning both the Vienna Document and the CFE Treaty; namely, that compliance and conformity with politically- and legally-binding commitments and obligations must be fulfilled.³⁴⁹ To be fair, the unprecedented nature of NATO's first operation of this nature rendered the interpretation of specific provisions a particular challenge. Nevertheless, given the strong Russian criticism of Operation ALLIED FORCE, including the lack of an international legal mandate (i.e., UN Security Council authority), NATO had been placed squarely on the defensive, maintaining that after more than a year of concerted diplomatic effort, the humanitarian crisis (including genocide) and overall threat to international peace and security had warranted the actions that were taken.³⁵⁰

Notwithstanding the moral justification of the mission, the lack of conformity with

³⁴⁸ Ibid, 237.

³⁴⁹ Michael D. Miggins, *Conventional Arms Control and Its Contribution to European Security and Stability*, 25-28.

³⁵⁰ North Atlantic Treaty Organisation, "Russia's accusations - setting the record straight," *NATO Fact Sheet April 2014* (Brussels: NATO Public Diplomacy Division, Press and Media Section, 2014), 3.

established, binding regimes only served to further exacerbate the situation for the Alliance, both internally (given noted variances in interpretation and actions taken by the participants) and externally (international criticism). This would remain an important consideration, as demonstrated by the scrutiny of NATO participating States that have continued to operate under the *Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia* (9 June 1999) and UN *Security Council Resolution 1244* (10 June 1999).³⁵¹

As a result of its poor response to Vienna Document and CFE Treaty scrutiny, NATO was compelled to acknowledge associated deficiencies and consequently set about to address this through its integral lessons learned process. First and foremost, the perceived conflict between regime compliance and operational security/force protection needed to be reconciled. This was largely addressed by ensuring a full understanding of extant provisions, achieved through the provision of training and promulgation of related information throughout NATO's command structure, thereby ensuring that arms control expertise would be made readily available at all levels. It was also decided that, as a matter of standard procedure, Alliance planning would "factor in" the Vienna Document and other arms control provisions into both the political decision making and operational planning processes, to ensure appropriate and timely fulfilment of obligations – particularly those relating to the build-up of NATO forces during periods of tension and crisis. As a means of further inculcating these

³⁵¹ North Atlantic Treaty Organisation, *NATO's role in relation to the conflict in Kosovo*, n.p.

requirements throughout the NATO chain of command, regime-related obligations and responsibilities were incorporated into command post and field training exercises.³⁵²

As explained by Michael Miggins, former Head of the NATO Verification Coordinating Committee (VCC) -- the principal body in managing and coordinating Allies' conventional arms control implementation, data management and verification activity³⁵³ -- the lessons learned from the Kosovo crisis were eventually translated into formal NATO military guidance. In December 2002, *Military Committee (MC) 453 - Arms Control and Alliance Military Activity* was published to "provide guidance for developing procedures and defining responsibilities for complying with arms control commitments which may impact on NATO's collective military activity."³⁵⁴ MC 453 was subsequently included as a standard annex to NATO operational plans and orders.³⁵⁵

The manner in which NATO eventually "de-conflicted" compliance and conformity with Vienna Document provisions and its operational security/force protection imperatives represents a noteworthy acknowledgement by the Alliance of not only the imperative of fulfilling participating States' obligations, but also the utility of doing so. That is, notwithstanding the associated impact upon the planning and execution of operations, compliance and conformity with binding obligations were ultimately determined to be *compatible* with the attainment of overarching strategic objectives, as reflected in the Alliance's 2010 Strategic Concept:

³⁵² Michael D. Miggins, *Conventional Arms Control and Its Contribution to European Security and Stability*, 25.

³⁵³ North Atlantic Treaty Organisation, *NATO Handbook* (Brussels: NATO Public Diplomacy Division, 2006), 296.

³⁵⁴ Michael D. Miggins, *Conventional Arms Control and Its Contribution to European Security and Stability*, 27.

³⁵⁵ *Ibid*, 27.

NATO seeks its security at the lowest possible level of forces. Arms control, disarmament and non-proliferation contribute to peace, security and stability, and should ensure undiminished security for all Alliance members. We will continue to play our part in reinforcing arms control and in promoting disarmament of both conventional weapons and weapons of mass destruction, as well as non-proliferation efforts.... We are committed to conventional arms control, which provides predictability, transparency and a means to keep armaments at the lowest possible level for stability. We will work to strengthen the conventional arms control regime in Europe on the basis of reciprocity, transparency and host-nation consent.³⁵⁶

NATO's Kosovo experience also highlighted the fact that operational security and force protection considerations had already been factored into the Vienna Document's (and CFE Treaty's) provisions. These "managed access" stipulations effectively limit or prohibit verification access to specific locations, facilities, units and/or equipment that would otherwise affect physical, personnel and operations security/protection. Section VIII (Compliance and Verification) Paragraph 79 states:

In the specified area the inspection team accompanied by the representatives of the receiving State will be permitted access, entry and unobstructed survey, except for areas or sensitive points to which access is normally denied or restricted, military and other defence installations, as well as naval vessels, military vehicles and aircraft. The number and extent of the restricted areas should be as limited as possible. Areas where notifiable military activities can take place will not be declared restricted areas, except for certain permanent or temporary military installations which, in territorial terms, should be as small as possible, and consequently those areas will not be used to prevent inspection of

³⁵⁶ North Atlantic Treaty Organisation, *Active Engagement, Modern Defence. Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization* (Brussels: North Atlantic Treaty Organisation, 2010), 23-24.

notifiable military activities. Restricted areas will not be employed in a way inconsistent with the agreed provisions on inspection.³⁵⁷

Both the Chechen and Kosovo examples therefore illustrate the adverse impact of attempts to withhold, limit, control, constrain or otherwise deny information, notification or access as provided for under the regime. Subsequent corresponding changes in NATO policy and doctrine, while clearly favourable in terms of the Alliance's acknowledgement of the imperative of compliance and conformity, would nevertheless need to be consistently and uniformly applied in practical terms to avoid future difficulties. Conversely, despite what might be described as begrudging acknowledgement, the Russian Federation's future compliance and conformity could be expected to remain characteristically selective and conditional in both its interpretation and corresponding conduct. In any event, effective governance and management would remain particularly important in ensuring uniform adherence to the regime's fundamental provisions. This would remain a persistent dilemma for not only the Vienna Document, but in all aspects of conventional arms control and CSBM implementation. Nevertheless, whether inadvertent or deliberate, various transgressions would continue to impede the implementation of the Vienna Document in the years to come, with overall misapprehension and lack of awareness only serving to further exacerbate this. Indeed, in 1998, Colonel A.M. Brown, Director J3 Arms Control Verification, National Defence Headquarters (Canada), in noting a fundamental lack of understanding in both the concept and technical requirements of the regime within the upper echelons of military chains of command, departments and ministries, stated that "ACV [arms control verification] operations are poorly understood, if at all, by senior

³⁵⁷ Conference On Security And Cooperation In Europe, *Vienna Document 1994 of the Negotiations On Confidence- and Security-Building Measures*, 31-32.

management....”³⁵⁸ The ramifications of this lack of understanding were reflected in a 2005 United States Department of State report on adherence and compliance, which stated:

Even if violations are detected early and are quickly understood as such, an arms control, nonproliferation or disarmament regime can still be in peril if its members are unable or unwilling to address them as compliance challenges. Detection is only part of what is needed: violations must have consequences. National governments play a critical role both in deterring and detecting violations, and in taking resolute action – individually and collectively – to enforce compliance and hold violators accountable for their actions. Verification only works when these elements act together to deter, detect, and remedy noncompliance.³⁵⁹

These fundamental deficiencies notwithstanding, the Vienna Document 1994 remained sufficiently robust to not only sustain its support within the OSCE, but to also enable the progression to a successor regime. Indeed, despite a range of noted underlying “problems,” FSC and AIAM consultations from 1995 to 1999 continued to endorse the overall value and effectiveness of existing CSBM and seek, where appropriate, their continued improvement and development.³⁶⁰ This included initial adjustments that included a common five-year period for air base visits, clarification of the role of the Conflict Prevention Centre in the operation and oversight of the OSCE Network and an adjustment of the timeframe for the submission of defence planning information.³⁶¹ This was followed by additional “tweaks,” that included the

³⁵⁸ Angus M. Brown, *Canadian Armed Forces Arms Control Operations: A Historical Record. 1989-1997* (Ottawa: Department of National Defence, 1998), 2.

³⁵⁹ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. August 2005* (Washington: United States Department of State, 2005), 8.

³⁶⁰ Organisation for Security and Cooperation in Europe, *Annual Report 1995 on OSCE Activities*, 31.

³⁶¹ Organisation for Security and Cooperation in Europe, *Annual Report 1996 on OSCE Activities* (Vienna: Organisation for Security and Cooperation in Europe, 1996), 20.

standardisation of reporting formats, an elaboration of *force majeure* provisions and the decision that multinational teams would conduct evaluation visits.³⁶² Otherwise, the OSCE realised a significant overall increase in Vienna Document 1994 implementation activity. From 1996 to 1999, the following CSBM operations, activities and events were undertaken:

- Specified Area Inspections: 150;
- Unit Evaluations: 265;
- Airbase visits: 18;
- Observation of Certain Military Activities and Visits to Military Facilities and Formations: 37; and
- Demonstrations of New Types of Major Weapon and Equipment Systems: 17.³⁶³

This notable level of activity by participating States to the Vienna Document 1994 provides ample evidence of continued strong support to the regime, as well as its growing utility as a mechanism of early warning, conflict prevention, crisis management and post-conflict mitigation. On-going refinements also served to reinforce the regime's complementarity with the various other resources employed by the OSCE in its increasingly comprehensive approach to politico-military, economic, environmental and human security. In addition to the OSCE's primary function as a security-oriented consultative institution, these resources included a growing number of

³⁶² Organisation for Security and Cooperation in Europe, *Annual Report 1997 on OSCE Activities. (1 November 1996 - 30 November 1997)* (Vienna: Organisation for Security and Cooperation in Europe, 1997), 31.

³⁶³ Conference on Security and Cooperation in Europe and Organisation for Security and Cooperation in Europe, 1996-1999 Annual Report data (Vienna: CSCE/OSCE, 1996-1999).

monitoring missions, field operations and programmes employed specifically in response to crisis and conflict situations. As these situations were not limited to inter-state security relations, this provided the opportunity to further demonstrate the Vienna Document's versatility and efficacy, as noted by Ambassador Herbert Salber, Director of the OSCE Conflict Prevention Centre:

...many of the OSCE's best practices in conflict prevention and conflict resolution are well-tested: these include a series of confidence-building and security measures that can be used in situations of inter-state conflicts but also in the case of conflicts within states to foster confidence and cooperation among different political, ethnic and religious communities.³⁶⁴

Accordingly, despite the implementation difficulties experienced during the Chechen and Kosovo crises, the practical utility of the Vienna Document 1994 continued to be demonstrated and valued accordingly, as not only an anticipatory and preventative security regime, but also as a reactive mitigation measure. This included its broadened practical application in response to unresolved or "frozen" domestic conflicts in Eastern Europe and the South Caucasus, including their separately established security arrangements. Specifically, these unresolved conflicts comprised:

- the conflict between Moldova and its eastern Transdniestrian region (1990 – 1992). Since 1992, a Moscow-brokered ceasefire agreement, including a trilateral military "Joint Control Commission" composed of Russian, Moldovan and Transdniestrian personnel (subsequently including a small number of Ukrainian observers) has remained in effect,

³⁶⁴ Hebert Salber, "Why the OSCE's Approach to Conflict Prevention and Conflict Management Remains Important," *Per Concordian. Journal of European Security and Defense Issues*, Volume 1 Number 2 June 2010. (Garmisch-Partenkirchen: George C. Marshall European Center for Security Studies, 2010): 9.

with Transdniestria effectively functioning as an autonomous entity under the de facto protection and influence of Russia;

- the first South Ossetia conflict (1991 – 1992) between the Georgian government forces and secessionists of that country's South Ossetia Autonomous Oblast. A ceasefire, again brokered by Moscow, established a "joint peacekeeping force," but left South Ossetia without a final determination of its political status, remaining closely aligned with Russia;
- the conflict in Georgia's Autonomous Republic of Abkhazia (1992 – 1993), between Georgian government forces and Abkhazian separatist forces. A precarious 1994 ceasefire, once again brokered by Moscow, combined with a peacekeeping force and observers, left the status of the region undeterminable, but well within the Russian sphere of influence; and
- the Nagorno-Karabakh conflict between Azerbaijan and Armenia (1988 – 1994), that resulted from the parliament of Azerbaijan's Nagorno-Karabakh Autonomous Oblast voting to join Armenia in early 1988. Yet another Russian-brokered ceasefire was put in place in 1994, along with peace talks, coordinated and mediated by the OSCE "Minsk Group" (comprising France, the United States and the Russian Federation), which remain on-going.³⁶⁵

While all of these conflicts are singularly distinct in terms of their respective geographic, political and demographic circumstances, they nevertheless share common factors, which include their Soviet origins and the persistence of Moscow's regional influence through its direct or furtive support to secessionist entities and governments.

This approach has been consistent with specific facets of Russia's 1993 Foreign Policy

³⁶⁵ S. Neil MacFarlane, "Frozen Conflicts in the Former Soviet Union – The Case of Georgia/South Ossetia," *OSCE Yearbook, 2008* (Vienna: Organisation for Security and Cooperation in Europe, 2008), 23-25.

Doctrine and Military Doctrine (and successive policies), which have accounted for the use of military power in support of ethnic Russians in the Near Abroad. This includes the discernment of the suppression of "rights, liberties and legitimate interests" of not only Russian Federation citizens living in foreign states but, by inference, those identifying themselves ethnically and culturally as Russian, particularly in areas in which local demographic majorities are so composed.³⁶⁶ This has resulted in what diplomat and scholar Filon Morar refers to as "a confluence point between different regional and international actors' interests."³⁶⁷ That is, Russian policy concerning the divergences between post-Soviet states and entities aligned with Moscow (i.e., separatist groups or governments, as is the case with Armenia) has been and remains fundamentally incompatible with the OSCE's governing principles and as such, discordant with the implementation of the Vienna Document and other regimes. Indeed, this incompatibility has been most recently exemplified in the developments leading to Russia's 2014 annexation of Crimea and the on-going conflict in Eastern Ukraine. That is, Moscow's attendant policies and actions have escalated to the point of significantly impacting "the normative bedrock of European security institutions," including "sovereign equality, the indivisibility of security, refraining from the threat or use of force and, last but not least, the territorial integrity of all states."³⁶⁸

³⁶⁶ Keith Armes, "Russia's New Military Doctrine," *Perspective Volume IV, No. 2 (December 1993)* (Boston: Institute for the Study of Conflict, Ideology and Policy, 1993), n.p.

³⁶⁷ Filon Morar, "The Myth of Frozen Conflicts. Transcending Illusive Dilemmas," *Per Concordian. Journal of European Security and Defense Issues, Volume 1 Number 2 June 2010* (Garmisch-Partenkirchen: George C. Marshall European Center for Security Studies, 2010): 11.

³⁶⁸ Ulrich Kühn, "Three Crises Threatening European Security Architecture," *European Leadership Network*, 24 February 2015 [journal on-line]; available from http://www.europeanleadershipnetwork.org/three-crises-threatening-the-european-security-architecture_2466.html; Internet; accessed 22 April 2015, n.p.

Vienna Document 1999

As noted, over the course of the Vienna Document 1994's five-year period of implementation, focused FSC and AIAM consultations enabled further refinement and expansion of its provisions. This ultimately resulted in the fourth iteration -- the Vienna Document 1999 -- being formally adopted at the FSC's 269th plenary meeting in Istanbul in November 1999. In addition to expanding its constraining provisions to a broader range of military activities, the updated regime also increased site visits, inspections and observations, while further enabling broadened military cooperation. It also incorporated new chapters on defence planning and regional security within the zone of application, enabling participating States to complement CSBMs with additional measures, specifically oriented upon unique, sub-zonal requirements.³⁶⁹

While the attainment of the unanimity procedurally required to produce the updated regime was a notable achievement, the FSC's efforts also highlighted the limitations of consensus-based amendment. A range of proposals to further refine and improve the provisions of the regime, such as adjustments to established force level thresholds and the inclusion of new types of weapon and equipment systems in the annual military information exchange, failed to attain common support. While not the only participating State to disagree with these proposals, the Russian Federation figured prominently. While specific reasons varied, the fundamental underlying reason remained the desire to best secure individual national interests in light of evolving security developments. In 1999, this had included NATO's on-going process of

³⁶⁹ Organisation for Security and Cooperation in Europe, *Vienna Document 1999 of the Negotiations on Confidence- and Security-Building Measures* (Vienna: Organisation for Security and Cooperation in Europe, 1999), 42.

enlargement, along with the Kosovo and North Caucasus conflicts.³⁷⁰ As stated by Josiah Rosenblatt, United States Deputy Head of Mission to the FSC:

We recognize many of us suffered disappointments during the review process.... Many delegations -- including my own -- put forward new ideas and proposals for consideration. For example, we and others had high hopes for the inclusion of provisions related to military infrastructure transparency and new aircraft types. After thorough consideration, however, few of these proposals have survived the review process and are included in Vienna Document 1999.³⁷¹

Therefore, while the Vienna Document 1999 underwent sufficient modification to be issued as a separate and distinct version, it also demonstrated the limitations of more substantive alterations being incorporated. Nevertheless, the update represented a continued endorsement of the validity of its extant provisions, demonstrating that the regime had reached a point of maturity where calibration, vice revision, appeared more suitable:

These changes strengthen the Vienna Document and make it even more applicable to today's politico-military realities. Second, however, and equally as important, the process itself has demonstrated that we already have a mature and sturdy collection of CSBMs. This review has helped us understand that there is a finite number of militarily significant CSBMs that are capable of achieving consensus on an OSCE-wide scale.³⁷²

Implemented over a period of 12 years, the Vienna Document 1999 represents, in many respects, the epitome of the CSBM concept. In stark contrast with the CFE

³⁷⁰ Wolfgang Richter, "A new start for the Vienna Document," 17.

³⁷¹ United States Department of State, *Statement on Vienna Document Delivered by Deputy Chief of Mission Josiah Rosenblatt to the OSCE Forum for Security Cooperation, Istanbul* (Istanbul: U.S. Mission to the OSCE, 1999), n.p.

³⁷² United States Department of State, *Statement on Vienna Document Delivered by Deputy Chief of Mission Josiah Rosenblatt to the OSCE Forum for Security Cooperation, Istanbul*, n.p.

Treaty (a highly structured and categorized arms control regime designed to quantifiably limit, reduce or eliminate specific weapon and equipment systems), the provisions of the Vienna Document 1999 were a comparative model of simplicity – comprising just 12 chapters and five annexes in a 57-page publication. Its collaborative, transparent approach to reducing uncertainty and clarifying intent regarding military activities had evolved into a well-developed and proven security mechanism. Specifically, it established a well-balanced combination of information exchanges and notifications; specified area inspections; unit/formation evaluation visits; observation visits; and various forms of military-to-military contacts. As the regime’s longest-serving iteration, the Vienna Document 1999 represents a definitive benchmark. Accordingly, a synopsis is provided at Appendix B.

Refined and enhanced, the range of Vienna Document 1999 CSBMs and other provisions had rendered it a highly functional and effective component of European and Eurasian security. Going well beyond purely quantitative regulatory controls on weapons, equipment and personnel, the 1999 version constituted a wholly distinctive context, scope and character in reducing the risk of armed conflict across the spectrum of regional, sub-regional, area and domestic security. As both a proactive measure against real or perceived hostile intent, as well as a mitigating measure in response to military escalation and conflict, it “fit” particularly well with the CFE Treaty and the nascent Open Skies Treaty, which now comprised the oft-referred “three pillars” of the OSCE’s contemporary conventional arms control framework.³⁷³

³⁷³ Zdzisław Lachowski, “Conventional arms control.” *SIPRI Yearbook 2002: Armaments, Disarmament and International Security*, Stockholm International Peace Research Institute (London: Oxford University Press, 2002), 734-735.



Figure 4.1: Vienna Document 1999 Specified Area Inspection Aerial Survey, Munitions Depot, Central Asia.³⁷⁴

For the most part, the initial implementation of the Vienna Document 1999 unfolded as expected. The 2001 AIAM noted that “the first full year of implementation of the Vienna Document 1999 proceeded smoothly without, the need for major changes.” It was further acknowledged that the Document had reached a level of maturity where “fine tuning” vice “renegotiation” would be more appropriate as circumstances dictated.³⁷⁵ In fact, implementation was taking place very much according to its overall design, including various compliance- and conformity-related observations raised in national reporting. In the first full year of implementation, the following CSBM operations and activities were undertaken:

- Specified Area Inspections: 70 (of which 6 were bilateral);
- Unit Evaluations: 56 (of which 18 were bilateral);

³⁷⁴ Department of National Defence, Strategic Joint Staff Arms Control Verification photo.

³⁷⁵ Organisation for Security and Cooperation in Europe, *Annual Report 2001 on OSCE Activities. (1 November 2000 - 31 October 2001)* (Vienna: Organisation for Security and Cooperation in Europe, 2001), 103.

- Airbase visits: 6;
- Observation of Certain Military Activities and Visits to Military Facilities and Formations: 10; and
- Demonstrations of New Types of Major Weapon and Equipment Systems: 5.³⁷⁶

By this time, the OSCE itself had matured considerably as an institution. Fully engaged in an extensive range of security endeavours, the Organisation now sported field missions, offices and monitoring groups throughout Europe and Central Asia, for which it was endowed with a unified budget of over €209,000,000.³⁷⁷ An expanding number of high commissioners and representatives were now assigned varied responsibilities within the politico-military, economic/environmental, and human security dimensions. With direct oversight accorded to the FSC and relatively minor issues aside, the Vienna Document appeared to be moving in the right direction as the OSCE's cornerstone regime, albeit within an increasingly complex organisational matrix that now extended well beyond the customary arms control and regional security framework. Indeed, perhaps as a function of its success, the operation of the regime had become increasingly routine and, as noted by Angus Brown, "a never ending responsibility:"

While most military operations begin and end at set times, ACV operations are ongoing. From time to time there may be successes or highlights but most of the work is ongoing and somewhat tedious.... The visibility of ACV operations has

³⁷⁶ Organisation for Security and Cooperation in Europe, *Annual Report 2001 on OSCE Activities*. (1 November 2000 - 31 October 2001), 103.

³⁷⁷ Ibid, 128.

been obscured on a routine basis.... It is hard to drum up enthusiasm for “more of the same.”³⁷⁸

Implementation was also becoming increasingly challenged by the imperative to keep pace with the rapid changes that were occurring within the zone of application:

New threats and challenges have emerged; unresolved territorial conflicts, recurrent violence and military action have created new distrust; and further enlargement of NATO and the EU have changed the political landscape in Europe. While the general trend of force reductions in Europe has persisted, there has been a sharp increase of major weapon holdings in the Caucasus area. At force levels which would have been assessed “minor” in Cold War times, a war was fought. One might legitimately ask why the Vienna Document and other CSBMs have not played their expected role in early warning and conflict prevention during recent conflicts.³⁷⁹

This imperative included the adjustments needed to better account for lower force levels as “notifiable,” or the inclusion of installations and sites containing high concentrations of conventional armaments and equipment, such as training centres and depots, not covered under the regime.³⁸⁰ Other issues were more insipid in nature, such as interpretive clarifications, technical updates to verification equipment, the composition of inspection/evaluation teams, and the utilisation of interpreters. Over time, these relatively ordinary “care and maintenance” matters would bear greater significance.

³⁷⁸ Angus M. Brown, *Canadian Armed Forces Arms Control Operations: A Historical Record. 1989-1997*, 2.

³⁷⁹ Wolfgang Richter, “A new start for the Vienna Document,” 17-18.

³⁸⁰ Regional Arms Control Verification and Implementation Assistance Center, “Interview with Brigadier General Jürgen Beyer, Director of the Bundeswehr Verification Centre.” *Interview*. (6 November 2012) [journal on-line]; available from <http://www.racviac.org/news/interview.html>; Internet; accessed 22 January 2015, n.p.

Other challenges -- directly and indirectly related -- were also developing that would increasingly impact the oversight and application of the Vienna Document 1999. These included factors affecting the commitment and investment of participating States in maintaining the essential viability of the regime. That is, in addition to annual financial contributions to the OSCE, national verification capabilities and programmes were clearly essential. However, for several participating States the resources required to sustain these capabilities and programmes had come to be perceived as increasingly counterintuitive to the economic benefit derived from the end of Cold War. Indeed, this “peace dividend” had been readily translated into corresponding cutbacks in most military establishments and defence budgets. These ranged from the modest to the more dramatic, such as Canada’s 1993 complete withdrawal of its 40-year commitment of stationed forces in Europe, which at the time comprised a mechanized brigade group and an air division.³⁸¹ The United States defence budget fell about three percentage points of GDP (i.e., seven to four percent) from 1990 to 2000,³⁸² with most participating States following suit. A by-product of the “peace dividend” was the corresponding loss of imperative and general complacency in proactive security investment, including arms control:

The end of the Cold War has led to reductions in the defense budgets of the United States, of most of its allies in NATO, and of the successor states of the Soviet Union and most of its allies in the former Warsaw Pact. The end of the East-West arms race by no means, however, implies that the arms race as a phenomenon has come to an end.³⁸³

³⁸¹ Roy Rempel, *Counterweights. The Failure of Canada’s German and European Policy, 1955-1995* (Montreal: McGill-Queen’s Press) 178-179.

³⁸² Diana Walker, *Trends in U.S. Military Spending*, Council on Foreign Relations Report (Washington: Council on Foreign Relations, 2014), 6.

³⁸³ Michael D. Intriligator, “The Concept of a Peace Dividend,” in *Economics of Peace and Security Journal*, ed. James K. Galbraith, Jurgen Brauer and Lucy L. Webster (Oxford: Encyclopaedia of Life Support Systems, 2009), 72.

Ultimately a national responsibility, reduced priority and the lack of resources accorded to conventional arms control by several participating States manifested themselves in various ways over time, including the reduced size and structure of verification units, technical training and the sustainment of “core” expertise by policy officials, diplomats and verification personnel.³⁸⁴ For a number of participating States, a “minimalist” approach was developing; that is, falling back on doing only what was absolutely necessary to remain compliant.³⁸⁵ This included curtailing “active” operations and restricting activity to the receipt of and support to “passive” inspections and evaluations conducted within respective national territories.³⁸⁶ Even the NATO VCC was largely unable to mitigate this amongst Allied participating States, as it was similarly constrained with “few collective resources” and was “not well configured to support multilateral arms control.”³⁸⁷ Like the OSCE, the VCC was therefore largely dependent upon the verification capabilities and assets of its members. Angus Brown characterised this overall trend thusly:

In times of budgetary constraints, ACV operations are hard to justify as productive for senior management. They see these as sideshows, to be done at the least possible cost.... This probably reflects two things: declining importance of ACV operations in the eyes of some senior management... and secondly, the fact that many of the organizations concerned... were now approaching a “steady state” of activity and regarding ACV operations as more

³⁸⁴ Official of the UK MoD Arms Control and Counter Proliferation policy Department, interview with the author, Vienna, 25 Jun 2014.

³⁸⁵ Department of State, *08USNATO406_a Results from 23 October 2008 VCC and Experts Meetings*, 31 October 2008 (CONFIDENTIAL – Released) (Brussels: United States Delegation to NATO, 2008), n.p.

³⁸⁶ Department of National Defence, Strategic Joint Staff Arms Control Verification, *General Orientation Briefing*, 32.

³⁸⁷ Oliver Meier, “News Analysis: NATO, Arms Control and Nonproliferation: An Alliance Divided?” *Arms Control Today*, 31 March 2009 [journal on-line]; available from https://www.armscontrol.org/act/2009_04/NewsAnalysisNATO; Internet; accessed 21 July 2015, n.p.

routine staff work rather than the anomalous and wonderfully new thing they had been previously.³⁸⁸

Another concern pertained to broader developments in conventional arms control outside of the Vienna Document regime, but having due effect, nonetheless. These included growing stresses between the Russian Federation and other States Parties to the CFE Treaty following the OSCE summit in Istanbul in 1999. Indeed, the developing “stalemate” concerning the ratification of the Treaty’s “adapted” successor remaining contingent upon the fulfilment of Russian military force withdrawals from Moldova and Georgia constituted a principal manifestation of Moscow’s disaccord with not only the CFE Treaty, but the conventional arms control and CSBM status quo in general.³⁸⁹ This, in turn, highlighted the growing incongruity of Moscow’s aspirations with the principles embodied by these regimes. As Wolfgang Zellner points out, CFE Treaty-related pressures:

... would influence European arms control in general, as well as all institutions and instruments dealing with cooperative security. It is doubtful whether the Vienna Document 1999 on confidence- and security-building measures could survive if the CFE Treaty failed. More broadly, institutions such as the OSCE and the NATO-Russia Council could be affected. Finally, the breakdown of cooperative security policy in Europe would have a negative impact on U.S.-Russian strategic relations. It is difficult to imagine that they could continue to improve if tensions in Europe were to rise.³⁹⁰

³⁸⁸ Angus M. Brown, *Canadian Armed Forces Arms Control Operations: A Historical Record. 1989-1997*, 2, 16.

³⁸⁹ Organisation for Security and Cooperation in Europe, *Istanbul Document* (Istanbul, Organisation for Security and Cooperation in Europe, 1999).

³⁹⁰ Wolfgang Zellner, “Can This Treaty Be Saved? Breaking the Stalemate on Conventional Forces in Europe,” *Arms Control Today* (4 September 2009) [journal on-line]; available from <http://www.armscontrol.org/print/3815>; Internet; accessed 22 January 2015, n.p.

In keeping with its flexible and dynamic approach to security, the OSCE was becoming increasingly engaged in broader security initiatives as a response to various developments and requirements within its jurisdiction. With more than 4,000 personnel and 19 field missions in 17 countries, the Organisation's focus now extended well beyond the immediacy of Vienna Document 1999 implementation. This included its assistance to other multilateral agreements, including the new *Agreement on Sub-Regional Arms Control Article IV* (part of the *General Framework Agreement for Peace in Bosnia and Herzegovina*); broadened engagement in the economic and environmental dimensions of security; and expanded politico-military and human security endeavours, including terrorism, small arms and light weapons, corruption and policing.³⁹¹

Although such broadened engagement clearly demonstrated the Organisation's increasingly "flexible and adaptive approach," it was also indicative of growing difficulties in maintaining sufficient span of control and due focus on core functions. The OSCE Secretary General, Ján Kubiš acknowledged the "administrative problems identified in recent years, which were largely a consequence of the rapid growth in our field activities."³⁹²

In 2004, the OSCE reported that the AIAM held that year had undertaken a complete review of Vienna Document implementation measures, resulting in upwards of 40 proposals "aimed at further improving the transparency and relevance of the military information exchanged," with a number of those proposals implemented.³⁹³

This effort was, however, somewhat overshadowed by the ever-increasing range of

³⁹¹ Organisation for Security and Cooperation in Europe, *Annual Report on OSCE Activities 2002* (Vienna: Organisation for Security and Cooperation in Europe, 2003), 3-4, 95.

³⁹² Organisation for Security and Cooperation in Europe, *Annual Report on OSCE Activities 2002* (Vienna: Organisation for Security and Cooperation in Europe, 2003), 4.

³⁹³ Organisation for Security and Cooperation in Europe, *Annual Report on OSCE Activities 2004* (Vienna: Organisation for Security and Cooperation in Europe, 2005), 34.

other OSCE activities, which now included election monitoring and support activities in Ukraine and Afghanistan, conferences on anti-Semitism and racism, efforts to address human trafficking, Mongolia's acceptance as a Partner for Cooperation, and various other organisational reforms and related efforts to "transform and strengthen the Organisation."³⁹⁴

2005 marked the 30th anniversary of the Helsinki Final Act and the 15th anniversary of the Charter of Paris. In the OSCE's 2005 Annual Report, it was noted that efforts had been stepped up to even further broaden its activities in security matters that now included organized crime, migration and discrimination. Within this expanded activity, the FSC nevertheless continued to assess Vienna Document 1999 implementation and had issued a *Statement by the Chairman of the FSC on Prior Notification of Major Military Activities*, concerning a voluntary measure to further enhance openness and transparency. The report also noted that the Forum was working more closely with the OSCE's Permanent Council (PC) to facilitate FSC reporting on Vienna Document 1999 implementation for the AIAM.³⁹⁵

It is evident that within the growing complexities of the OSCE's activities, its core CSBM operations and activities, while still important, were becoming just one of many areas of involvement. In addition to their negotiation and oversight of adopted CSBM implementation measures, both the FSC and AIAM were being increasingly drawn into supporting other areas of the OSCE's broadened security portfolio. This was largely determined by the PC, itself influenced by the individual and collective interests of its national constituents, along with the institution's inherent predilection to

³⁹⁴ Organisation for Security and Cooperation in Europe, *Annual Report on OSCE Activities 2004*, 1.

³⁹⁵ Organisation for Security and Cooperation in Europe, *2005 Annual Report on OSCE Activities*, 35.

“take on more,” as means of advancing its vision of comprehensive security. As noted by Maxim Suchkov, “OSCE operations and performance are largely dependent upon the overall political context between its participating states – primarily between Russia and the West.”³⁹⁶

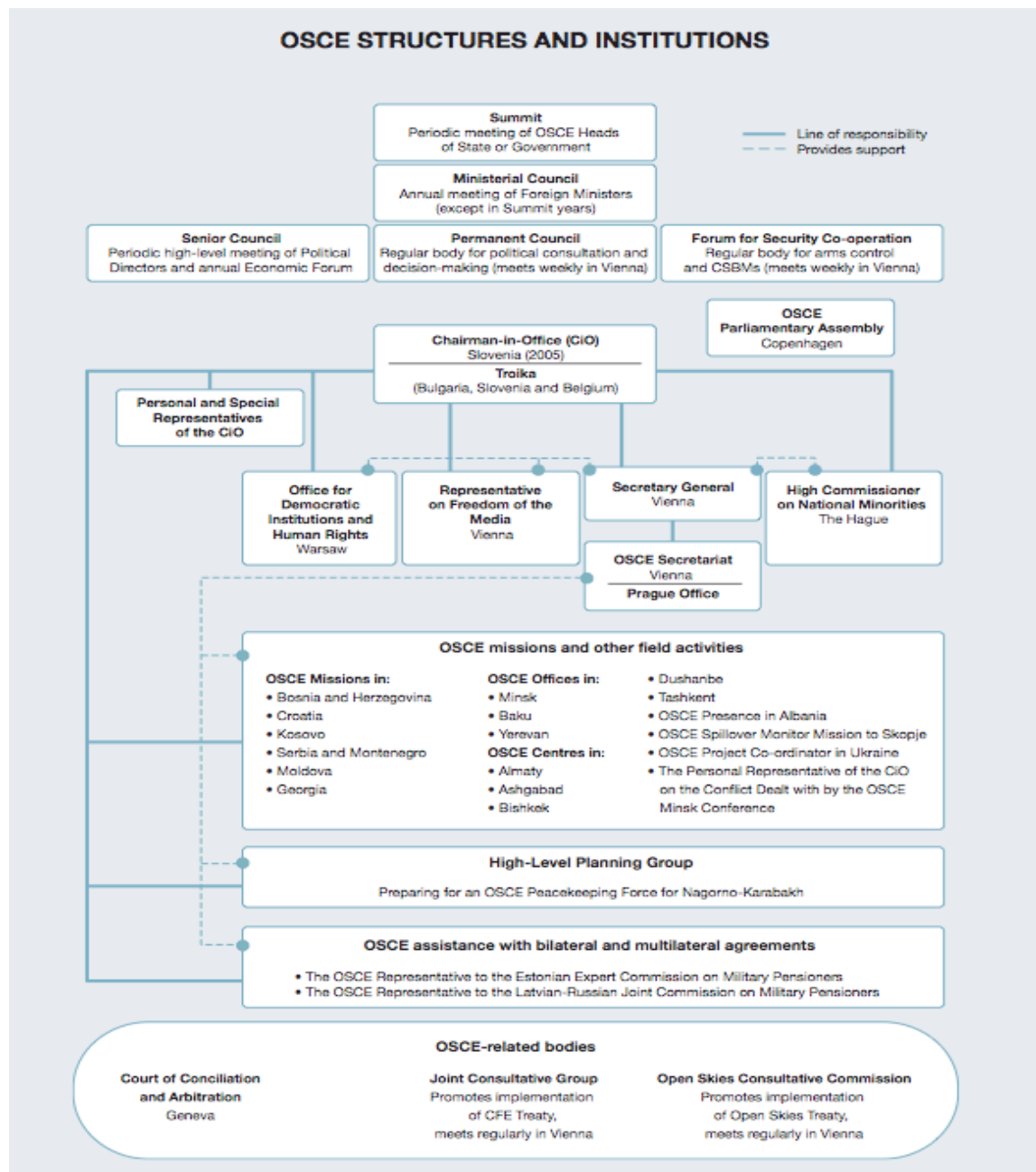


Figure 4.2: OSCE structures and institutions, 2005³⁹⁷

³⁹⁶ Maxim Suchkov, “Needed as Never Before: The Future of OSCE in a New Era of Old Challenges,” Pyatigorsk State Linguistic University Essay (Pyatigorsk: Pyatigorsk State Linguistic University, 2015), 3.

³⁹⁷ Organisation for Security and Cooperation in Europe, *2005 Annual Report on OSCE Activities* (Vienna: Organisation for Security and Cooperation in Europe, 2006), 7.

Responsible for the OSCE's "military dimension" the FSC's undertakings in broader security issues, while fully within its mandate, nevertheless left it frequently distracted, if not diverted, from its primary responsibilities. For example, in 2005, both the FSC and AIAM conducted work on "OSCE Documents on small arms and conventional ammunition."³⁹⁸ In addition, the FSC examined approaches in the elimination of toxic "melange" rocket fuel, undertook discussions on a possible OSCE role in the non-proliferation of weapons of mass destruction, contributed to the upcoming Annual Security Review Conference's terrorism thematic, and planned a high-level Seminar on Military Doctrine.³⁹⁹ While this broadened activity continued to illustrate the Organisation's "flexible and adaptive approach," it also denoted the increased potential to lose sight of core priorities. That is, Vienna Document 1999 issues would likely have been better addressed by a less preoccupied FSC according more focused attention to their resolution.

As additional "tweaking" of Vienna Document 1999 CSBM continued, it was becoming evident that many fundamental requirements were being overlooked. Whether the result of distraction or preoccupation with regime modalities, the actual management of implementation (i.e., inspections, evaluations and other executables) was becoming increasingly perfunctory. This is noteworthy, as these "cornerstone" functions were inherently dependent upon close oversight and there had been increasing occurrences of varied forms of non-compliance, non-conformity and other insufficiencies in fulfilling provisions.⁴⁰⁰ Although a regular topic of national reporting and informal discussion, formal FSC deliberation was comparably limited, aside from

³⁹⁸ Organisation for Security and Cooperation in Europe, *2005 Annual Report on OSCE Activities*, 35.

³⁹⁹ Ibid, 34-36.

⁴⁰⁰ Zdzislaw Lachowski, *Confidence- and Security-Building Measures in the New Europe*. Sipri Research Report No. 18 (Oxford: Oxford University Press, 2004), 87-89.

the occasional interventions made on specific occurrences.⁴⁰¹ By 2006, OSCE FSC and AIAM emphasis still remained somewhat fixated on proposals for expanded implementation of OSCE documents, along with CSBM training and assistance for Central Asian participating States and continued development of the OSCE Communications Network.⁴⁰² Meanwhile, occurrences of non-compliance and non-conformity had become commonplace and were increasing. They included various instances of military information containing discrepancies or not being provided at all, failures in hosting air base/military installation visits and demonstrations, and a growing number of notification, data and inspection/evaluation infractions.⁴⁰³ These ranged from minor oversights and misinterpretations, to unconcealed disregard of provisions and deliberate efforts to suppress access, observation and verification of defined military activity and exchanged data.⁴⁰⁴

For a number of years, the NATO VCC conducted annual “VCC Seminars” involving the Alliance’s Euro-Atlantic Partnership Council⁴⁰⁵ members, comprising both the participating States of the Vienna Document and States Parties to the CFE Treaty. The Seminar provided an informal means through which to openly discuss implementation issues, plan for joint multinational activities, define common training requirements, examine collaborative opportunities and address issues of concern. At the March 2006 Seminar, Major-General Nicolai Petrovich Artyukhin, the Head of the Russian National Nuclear Risk Reduction Centre asserted that his country’s “national

⁴⁰¹ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, OSCE Annual Implementation Assessment Meeting, 6-7 March 2006* (Ottawa: DND Canada, 2006), n.p.

⁴⁰² Organisation for Security and Cooperation in Europe. *2006 Annual Report on OSCE Activities* (Vienna: Organisation for Security and Cooperation in Europe, 2007), 23, 62, 92.

⁴⁰³ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. August 2005*, 49-50.

⁴⁰⁴ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, OSCE Annual Implementation Assessment Meeting, 6-7 March 2006*, n.p.

⁴⁰⁵ North Atlantic Treaty Organisation, *NATO Handbook*, 193.

procedures” would always supersede its “treaty obligations.”⁴⁰⁶ Artyukhin’s comment underscored one of the fundamental challenges to viable sustainment of the European and Eurasian arms control framework: that of interpretive and selective adherence to binding provisions. Notwithstanding that this assertion was completely at odds with conventional and international law, it also served to signal Moscow’s now well-established disaffection with the CFE Treaty as an affront to its security interests as a resurgent power and the lack of progress in the ratification of its successor – the Adapted CFE Treaty. Although it received little in the way of direct challenge from any other representative to the Seminar, Artyukhin’s pronouncement was nevertheless addressed in subsequent presentations and remarks from other representatives concerning the non-fulfilment of Vienna Document 1999 obligations.⁴⁰⁷

By this point, it had become increasingly apparent to the OSCE itself that the diversity and breadth of its security mechanisms, projects and missions were becoming increasingly difficult to manage. As acknowledged by Secretary General Marc Perrin de Brichambaut: “The OSCE is a uniquely complex Organization – complex in its decentralized structure and its ambitious and ever-growing mandates, complex also in the myriad activities it undertakes across 56 countries.”⁴⁰⁸ Furthermore, there was growing realisation of the need for closer scrutiny of Vienna Document implementation. In 2007, the first “Heads of Verification Centres” meeting was held in Vienna, concurrently with the AIAM. While the meeting provided the opportunity for practitioners to contribute their “practical thoughts and lessons learned on the

⁴⁰⁶ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, NATO Verification Coordinating Committee Seminar, 22-24 March 2006* (Ottawa: DND Canada, 2006), n.p.

⁴⁰⁷ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, NATO Verification Coordinating Committee Seminar, 22-24 March 2006*, n.p.

⁴⁰⁸ Organisation for Security and Cooperation in Europe, *Annual Report 2007* (Vienna: Organisation for Security and Cooperation in Europe, 2008), 7.

implementation of CSBMs,” for many, it fell short in having been held concurrently with the AIAM, precluding the ability to attend both events. In addition, several verification specialists appeared notably restricted in their ability to freely express their views, likely due to instructions received from their higher echelons, national delegations and/or capitals.⁴⁰⁹ Despite this, the meeting did provide the opportunity for some delegations to convey their views and concerns in a relatively frank and open manner. Compliance failures by Russia and certain other participating States, particularly those of the South Caucasus and Central Asia, were identified as a major concern in this intervention:

Notwithstanding diplomatic conventions, there needs to be a clear understanding of the implications of non-compliance. There must be consequences, else risk continued “shirking of responsibility” by a select but growing number of parties that appear to do so with little regard to the ramifications of their respective actions. ...ultimately it is the OSCE as a collective authority which should exercise and manage both positive and negative reinforcement in holding parties accountable.⁴¹⁰

At the 2007 NATO VCC Seminar, held in October of that year, representations made concerning the state of the Vienna Document 1999 were now much more direct in identifying on-going deficiencies, root causes and specific examples. Interventions included the imperative of adherence to established provisions in order to ensure certainty in the determination of compliance or non-compliance. It was also strongly emphasized that “interference” (with subtle reference to Artyukhin’s “national procedures” remark) was fundamentally contradictory to the principle of adherence to

⁴⁰⁹ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, OSCE Annual Implementation Assessment Meeting, 6-7 March 2007*, n.p.

⁴¹⁰ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Intervention – Annual Implementation Assessment Meeting and Heads of Verification Meeting, Vienna, 7 March 2007* (Ottawa: DND Canada, 2007), 3-4.

“agreed methods, procedures and techniques of verification,”⁴¹¹ particularly those undertaken under the specific provisions of established regimes.⁴¹²

It was also noted during the VCC Seminar that, in addition to records, monthly reports and quarterly/annual surveys on CSBM information exchanged, the OSCE CPC had produced a summary of recent trends in the implementation of the Vienna Document 1999. Some representatives took issue with the summary for having stated that inspections and evaluations that year had been undertaken “in full compliance with Vienna Document provisions,” while at the same time vaguely noting “problems or inconsistencies.” These “problems or inconsistencies” included complications in sending/receiving inspection requests/responses; differences in the effective period of reports; disagreement concerning areas to be inspected or mismatching inspection areas with those requested; issues with sensitive points; and undue restrictions being placed on the use of equipment during inspections. Moreover, in many instances, aerial inspections of specified areas had been frequently refused or cancelled, either due to weather, technical issues or security reasons. Although most briefings provided to inspectors and evaluators were described as “open and comprehensive,” others provided misleading or incomplete information. Responses to policy-related questions were sometimes limited or not provided at all. There were also problems noted concerning organisational issues.⁴¹³

⁴¹¹ United Nations Office for Disarmament Affairs, *Verification in all its aspects, including the role of the United Nations in the field of verification* (New York: United Nations, 2008), 26.

⁴¹² Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, NATO Verification Coordinating Committee Seminar, 4-5 October 2007* (Ottawa: DND Canada, 2007), n.p.

⁴¹³ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, NATO Verification Coordinating Committee Seminar, 4-5 October 2007*, n.p.

Further review had confirmed that these “problems and inconsistencies” were generally compliance and/or conformity related, largely involving the “usual suspects.” It was also noted that in several instances, official reports by inspecting or evaluating States contained “glaring” omissions or carefully edited comments concerning these transgressions. This particular shortcoming was characterised by some representatives as the intentional variance between “diplomatic interpretation” and the “operational realities of Vienna Document 1999 implementation.”⁴¹⁴ In other words, findings were frequently moderated or otherwise edited in order to avoid controversy or ill-will between inspecting and inspected states; that is: “the discernable difference between what we call ‘ground truth,’ and that which is officially published and/or otherwise conveyed at higher official levels.”⁴¹⁵

Further representations made at the Seminar cited numerous specific examples of non-compliance and non-conformity with Vienna Document 1999 provisions, ranging from minor oversights and errors to outright violations. These were mostly attributed to the Russian Federation and Soviet successor states, including those from the South Caucasus and Central Asian regions. Examples included:

- 2004 – 2007: repeated declarations of “national procedures” superseding Vienna Document 1999 inspection and evaluation provisions (Chapter IX, Paragraph 72);
- 2004 – 2007: increased cases of denial of “access, entry and unobstructed survey” within given Specified Areas without explanation (Chapter IX, Paragraph 81);

⁴¹⁴ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Vienna Document 1999 Compliance Issues and Recent Experiences. Presentation to NATO VCC Seminar 4 October 2007*, 6.

⁴¹⁵ *Ibid*, 6.

- February 2006: refusal of inspection request on grounds of “holiday preparations” and “reorganization of Verification Centre,” even though inspection period was outside national/religious holiday period (Chapter IX, Paragraph 79)
- March 2006: refusal of inspection through the declaration of *force majeure* attributable to a contrived weather forecast (Chapter IX, Paragraph 78);
- February 2007: denial of aerial inspection, even with an offer made by inspecting participating State to provide its own helicopter for this purpose (Chapter IX, Paragraphs 83, 93-102, 104);
- 2004-2007: failure/refusal to directly respond or otherwise acknowledge VD 99 Format 33 Inspection Notifications and other messages (Chapter IX, Paragraphs 79, 86); and
- 2004-2007: non-compliance due to de-facto abrogation of binding obligations through non-engagement (Chapter IX, Paragraph 72).⁴¹⁶

Subsequent Heads of Verification meetings in Vienna included changes to better integrate their discussions with the proceedings of the AIAM. As explained by Mathew Geersten, Head of the CPC’ FSC Support Section, operationally focused “food for thought” presentations and thematic working groups were intended to enable more fulsome dialogue amongst practitioners, while deconflicted timings would ensure better coordination with the AIAM. Topics included the clarification of provisions, resolving technical ambiguities, collaborative training and examining opportunities for improved efficiency. These changes were regarded as a suitable approach through which to attain common understanding, ameliorate working level implementation issues, facilitate the

⁴¹⁶ Ibid, 7.

exchange of ideas and better enable the development of recommendations.

Nevertheless, the efficacy of Heads of Verification consultations has nevertheless remained sub-par, given the continued disinclination of several verification units -- particularly those from former Soviet states -- to lead workshops, provide input or openly participate in discussions due to national policy constraints, lack of expertise or other limitations.⁴¹⁷

Despite its reticence in addressing issues of non-compliance and non-conformity “head-on,” the OSCE was ultimately compelled to pay more attention to implementation of the Vienna Document. Given the Russian Federation’s suspension of its CFE Treaty compliance in December of 2007, along with the August 2008 conflict between Georgia and Russia in South Ossetia, there were particular concerns over the effects these events would have on the viability of the regime. Certainly, with the loss of transparency brought about by Moscow’s self-imposed suspension, the imperative to preserve the feasibility and integrity of the Vienna Document had become even greater.

As stated in the 2008 FSC Chairperson’s Progress Report to the Sixteenth Meeting of the Ministerial Council, intensified dialogue and the employment of Chapter III (Risk Reduction) measures -- in response to the 20 April 2008 shoot down of a Georgian unmanned aerial vehicle over Abkhazia, Georgia by a Russian fighter aircraft -- did serve to temper increased tensions to some extent. Nevertheless, these consultative measures prevented neither the contravention of specific Vienna Document and CFE Treaty provisions, nor the outbreak of conflict in August of that year.

⁴¹⁷ Mathew Geertsens, interview with the author, OSCE Headquarters, Vienna, 5 March 2014.

Subsequent FSC discussions necessarily focused instead on post-conflict mitigation efforts.⁴¹⁸ The first post-conflict verification inspection conducted in Georgia, deferred from September to November of that year, was a Canadian challenge inspection conducted under Section 8 of the CFE Treaty -- similar in some respects to a Vienna Document specified area inspection, but somewhat more limited in time (24 hours) and area (65 square kilometres).⁴¹⁹ The inspection was conducted just south of the South Ossetia's internal boundary with Georgia. Despite various infringements of provisions and other constraints imposed by both belligerents, the inspection did manage to provide some useful findings. This included confirmation of a unilaterally imposed Russian "security zone," which extended south of this internal boundary, well into Georgian territory, in contravention of a French-brokered agreement to withdraw from uncontested Georgian territory three months earlier.⁴²⁰

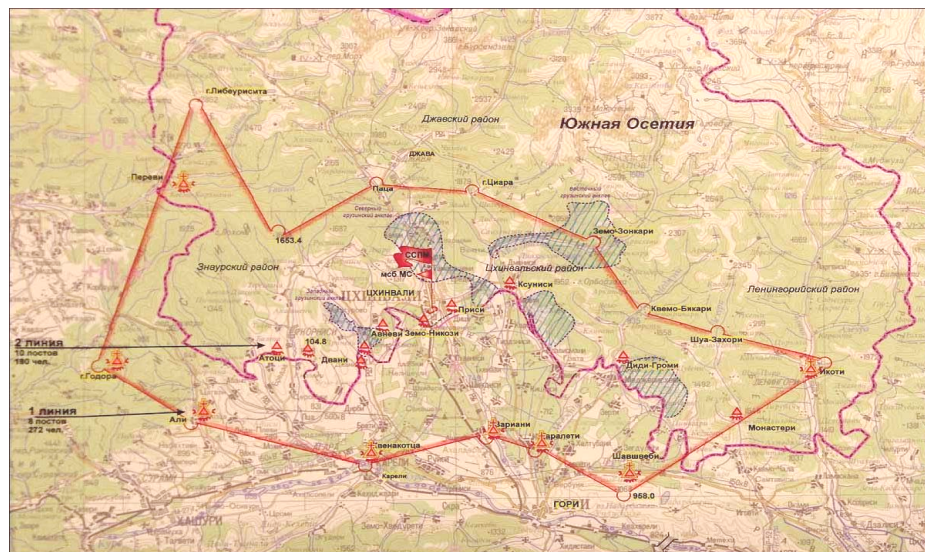


Figure 4.3: Georgia-South Ossetia Boundary with Russian Security Zone⁴²¹

⁴¹⁸ Organisation for Security and Cooperation in Europe, *FSC Chairperson's Progress Report to the Sixteenth Meeting of the Ministerial Council. Efforts in the Field of Arms Control Agreements and Confidence- and Security-Building Measures in Accordance with its Mandate. December 2008, Helsinki* (Vienna: Organisation for Security and Cooperation in Europe, 2008), 5-6.

⁴¹⁹ Conference on Security and Cooperation in Europe, *Treaty on Conventional Armed Forces in Europe*, Article VIII, 86, 90.

⁴²⁰ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Verification Mission Report – Operation VERIFY #1/08 – Georgia* (NATO CONFIDENTIAL – releasable excerpt) (Ottawa: DND Canada, 2008), n.p.

⁴²¹ Ministry of Defence of the Russian Federation, *Russian Security Zone*, provided by the OSCE Mission to Georgia, November 2008.

Notwithstanding these and numerous other transgressions, the 2008 FSC Chairperson's Progress Report remained entirely upbeat, with CSBM implementation characterised as "relatively stable and high," adding that "overall, there have not been any major changes in the implementation of these CSBMs during the past years."⁴²² While it was further noted that all but one participating State⁴²³ had fulfilled their annual military information exchange requirements (an improvement over the previous two years), only 36 of the now 56 participating States had submitted information on defence planning.⁴²⁴ In all, 2008 was described as "an active year" for CSBM implementation with a total of 108 specified area inspections and 55 (corrected from 75) formation/unit evaluation visits conducted.⁴²⁵ This notable increase in verification activity (up from 88 specified area inspections and 41 formation/unit evaluations in 2007)⁴²⁶ was specifically attributable to the increased utilisation of the Vienna Document regime -- especially by the Russian Federation -- following Moscow's December 2007 suspension of CFE Treaty compliance. Particularly confounding was a 2009 AIAM Consolidated Summary Report stating, despite information to the contrary, that approximately 95% of the inspections and 96% of the evaluations conducted in 2008 "took place in full compliance with the provisions and often in the spirit of the VD 99."⁴²⁷

⁴²² Organisation for Security and Cooperation in Europe, *FSC Chairperson's Progress Report to the Sixteenth Meeting of the Ministerial Council. Efforts in the Field of Arms Control Agreements and Confidence- and Security-Building Measures in Accordance with its Mandate. December 2008, Helsinki*, 3.

⁴²³ Unspecified under OSCE restrictions, but generally understood to be Uzbekistan.

⁴²⁴ Ibid, 3.

⁴²⁵ Ibid, 3.

⁴²⁶ Organisation for Security and Cooperation in Europe, *Nineteenth Annual Implementation Assessment Meeting. Vienna, 3 and 4 March 2009. Consolidated Summary* (Vienna: Organisation for Security and Cooperation in Europe, 2009), 25-26.

⁴²⁷ Organisation for Security and Cooperation in Europe, *Nineteenth Annual Implementation Assessment Meeting. Vienna, 3 and 4 March 2009. Consolidated Summary*, 26.

These statistics, while clearly at odds with the level and severity of compliance issues commonly acknowledged amongst several practitioners within NATO VCC Seminars, Heads of Verification Meetings and elsewhere, were indicative of the diplomatic politesse and other forms of filtering commonly incorporated into official verification reports submitted by a number of participating States. It is apparent that such filtering was aimed at maintaining positive reinforcement, promoting amity and otherwise avoiding open discord, in keeping with the OSCE's culture of impassiveness. Indeed, despite the ground truth obtained through several inspections and evaluations, reports broadcasted to all participating States through the OSCE Communications Network have frequently overlooked or downplayed specific contraventions or infringements of Chapter IX (Compliance and Verification) provisions.⁴²⁸ These included unwarranted constraints placed upon verification personnel, including the denial of access, refusal to provide aircraft for aerial survey, withholding information and placing unwarranted limitations upon freedom of movement. The tendency to overlook such findings can be at least partially attributed to the “diplomatically weighted” revisions made to “hard” technical determinations of inspections and evaluations in order to fulfil the positive outcomes desired by the OSCE. This fundamental problem had become further exacerbated by an overall decline in expertise, particularly amongst national policy and diplomatic personnel, leading to increasingly cursory oversight and “situated” interpretations of inspection and evaluation results. In some instances, verification non-compliance findings were strongly challenged and even overruled within some national chains of command due to apprehension over the potential negative reactions of inspected/evaluated participating States. This

⁴²⁸ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, OSCE Heads of Verification Meeting, 14 December 2009* (Ottawa: DND Canada, 2009), n.p.

apprehension was exacerbated by the misperception that non-compliance and non-conformity were exceptionally rare occurrences.⁴²⁹

Despite its reluctant acknowledgement of the seriousness of Vienna Document 1999 contraventions, a voluntary approach to compliance was advocated by the FSC,⁴³⁰ which otherwise remained focused upon continued enhancements and adjustments to the regime. Certainly, numerous presentations, food-for-thought papers and proposals were considered in various FSC working groups, plenary meetings and special meetings from 2007 to 2009, including:

- a proposal for a draft decision on defined specifications for the physical surface dimensions of the specified area;
- a recommendation for a draft decision on a single deadline for submission of information on defence planning;
- revisions to the prior notification of major military activities;
- a food-for-thought paper on improvements to the implementation of confidence- and security-building measures in accordance with the Vienna Document 1999;
- consideration of an OSCE role in promoting cyber security, and a presentation on maritime security;
- a proposal for naval confidence- and security-building measures;

⁴²⁹ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Issue Synopsis. SJS Coordination with Policy Group* (CONFIDENTIAL – releasable excerpt) (Ottawa: DND Canada, 2011), 2.

⁴³⁰ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, OSCE Heads of Verification Meeting, 14 December 2009*, n.p.

- proposed guidelines for briefings by military representatives during evaluations and inspections; and
- a proposal for possible FSC action to improve the application of Vienna Document 1999 compliance and verification measures by extending the use of digital cameras.^{431 432}

Given the wide range of proposals for improvement, the FSC established, in 2010, a standing procedure for regular and continuous updating of the Vienna Document, called “Vienna Document Plus.” With various proposals consolidated within a single “Vienna Document Plus folder,” decisions adopted would take effect immediately, unless decided otherwise. The FSC decision also included the practical requirement for the Vienna Document to be formally reissued every five years (beginning no later than 2011) with all adopted decisions duly incorporated.⁴³³ As provisions for FSC decisions to amending the Vienna Document already existed, the approach was regarded by some practitioners as unnecessary and unduly focused on the mechanism itself, instead of the more immediate imperative of effective implementation. The novelty of Vienna Document Plus also sparked a wide range of proposals, many of which were regarded by some of more experienced practitioners as either duplicative of existing provisions (indicating a lack of understanding of the existing regime) or imbalanced with respect to their specific benefit (such as reducing

⁴³¹ Organisation for Security and Cooperation in Europe, *FSC Chairperson’s Progress Report to the Sixteenth Meeting of the Ministerial Council. Efforts in the Field of Arms Control Agreements and Confidence- and Security-Building Measures in Accordance with its Mandate. December 2008, Helsinki*, 5.

⁴³² Organisation for Security and Cooperation in Europe, *FSC Chairperson’s Progress Report to the Seventeenth Meeting of the Ministerial Council. Efforts in the Field of Arms Control Agreements and Confidence- and Security-Building Measures in Accordance with its Mandate. December 2009, Athens* (Vienna: Organisation for Security and Cooperation in Europe, 2009), 4.

⁴³³ Organisation for Security and Cooperation in Europe, *FSC Chairperson’s Progress Report to the Eighteenth Meeting of the Ministerial Council. Efforts in the Field of Arms Control Agreements and Confidence- and Security-Building Measures in Accordance with its Mandate. December 2011, Vilnius*. (Vienna: Organisation for Security and Cooperation in Europe, 2011), 3-4.

the responsibilities of certain participating States in receiving and supporting inspections and evaluations).⁴³⁴

By 7 November 2011, the FSC had adopted the following Vienna Document Plus decisions (with several other several proposals concerning Chapters I, III, V and IX remaining under discussion):

- consideration of national holidays in the planning of verification activities;
- eligibility of air bases for hosting visits;
- timing of demonstrations of new types of major weapon and equipment systems;
- formalised procedure for incorporating relevant decisions into the Vienna Document with requirement for special meeting to take place every five years or more frequently to reissue the Vienna Document;
- updated list of Partners for Cooperation in Chapter XII;
- updated list of OSCE Participating States noted in the introduction;
- specification of coordinate accuracy for formations, combat units, air formations and air combat units;
- recommended briefing information for inclusion under Chapter IX; and
- revised title and introduction to the Vienna Document 1999.⁴³⁵

⁴³⁴ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, OSCE Annual Implementation Assessment Meeting, 2-3 March 2010* (Ottawa: DND Canada, 2010), n.p.

The Vienna Document 1999's utility and versatility as a "developed" CSBM were well substantiated over the course of its 11 years of implementation. This longest-serving iteration further demonstrated that the measure of its effectiveness as a confidence and security mechanism were not merely a function of design, but also the specific manner in which it was governed, managed and implemented within an increasingly precarious security environment. This is an important consideration in the regime's overall appraisal, particularly in light of the perceptions of its efficacy and the actions undertaken to address explicit deficiencies. This will be explored further in the examination of the Vienna Document 1999's succeeding iteration, the Vienna Document 2011.

Vienna Document 2011

At the OSCE Heads of Verification Centres Meeting, held in Vienna on 14 December 2011, the new Vienna Document 2011 (published 30 November 2011) was introduced, together with a briefing on its various amendments and enhancements. While generally accepted, it was nevertheless remarked upon by some delegations that from a technical and operational perspective, longstanding implementation issues remained largely unaddressed, and that the updated Document contained largely superficial alterations.⁴³⁵ More substantive change proposals, such as reductions in thresholds for prior notification of certain military activities, or increases in inspection and evaluation quotas had ultimately proven unattainable. Not surprisingly, the Russian Federation was regarded as the principal source of opposition to such changes, given its

⁴³⁵ Organisation for Security and Cooperation in Europe, *FSC Chairperson's Progress Report to the Eighteenth Meeting of the Ministerial Council. Efforts in the Field of Arms Control Agreements and Confidence- and Security-Building Measures in Accordance with its Mandate. December 2011, Vilnius, 4.*

⁴³⁶ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, OSCE Heads of Verification Meeting, 14 December 2011* (Ottawa: DND Canada, 2011), n.p.

general condescension of reinforced transparency measures (particularly in light of its own military build-ups), along with its view that additional inspections and evaluations would serve to “sidestep” its suspension of CFE Treaty compliance.⁴³⁷

In addition to lacking substance, some of the changes incorporated into the Vienna Document 2011 were regarded as either impractical or non-executable, such as the specification of highly precise geographic coordinates (to the nearest 10 seconds of latitude and longitude). This standard of accuracy was imposed without the prescribed technical means of measuring or verifying them (a number participating States specifically prohibit the use of precision positioning equipment, such as the Global Positioning System, by inspection and evaluation teams). Other changes included “elective” vice “directive” provisions, such as briefing information that “may” be included by units and formations during inspections and evaluations.⁴³⁸ While there was general support in the regularisation of Vienna Document amendments, a number of outstanding “Vienna Document Plus” recommendations themselves were regarded as trivial, imprudent or imbalanced. Accordingly, the reaction of some verification practitioners was decidedly unenthusiastic.⁴³⁹

While many amendments incorporated into the Vienna Document 2011 have been either superficial or aesthetic in nature, OSCE/FSC responses to more exigent implementation imperatives have remained largely muted. As noted by Wolfgang Zellner, in referring to the current state of the regime, “the progress achieved is limited

⁴³⁷ Wolfgang Zellner, “Conventional Arms Control in Europe: Is there a Last Chance?” *Arms Control Today* (March 2012) [journal-on-line]; available from www.armscontrol.org/act/2012_03/Conventional_Arms_Control_in_Europe_Is_There_a_Last_Chance#4 March 2012; Internet; accessed 18 April 2012, n.p.

⁴³⁸ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, OSCE Heads of Verification Meeting, 14 December 2011*, n.p.

⁴³⁹ *Ibid*, n.p.

to purely technical and procedural matters. This poor outcome is aggravated by difficulties with implementation.”⁴⁴⁰ This is not to suggest that no effort has been made to address specific implementation concerns. Indeed, within the FSC, AIAM and elsewhere, a number of participating States (including Armenia, Canada, the Czech Republic, Denmark, Georgia, and the United States) have strongly protested specific contraventions.⁴⁴¹ Nevertheless, rather than hold offenders to account, correct or otherwise influence a return to compliance and conformity, the more characteristic OSCE response has largely remained one of polite acknowledgement, while largely leaving the matter to the aggrieved parties to work out. While frequently rationalised by both OSCE officials and national delegations as a fundamental limitation of a consensus-based organisation, it can be also argued that such passivity has been employed as a means of avoiding discord in the interests of institutional harmony and self-preservation.

Accordingly, while the OSCE and FSC continued to preoccupy themselves with institutional and systematic concerns (such as Mongolia’s 2012 accession as a participating State⁴⁴² and the adoption of the United Nations Instrument For Standardized International Reporting of Military Expenditures⁴⁴³), more immediate security-related implementation matters remained largely unanswered. They include:

⁴⁴⁰ Wolfgang Zellner, “Conventional Arms Control in Europe: Is there a Last Chance?” *Arms Control Today*, n.p.

⁴⁴¹ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, OSCE Heads of Verification Meeting, 14 December 2011*, n.p.

⁴⁴² Organisation for Security and Cooperation in Europe, *Ministerial Council. Decision No. 2/12 Accession of Mongolia to the OSCE, 21 November 2012* (Vienna: Organisation for Security and Cooperation in Europe, 2012), 1.

⁴⁴³ Organisation for Security and Cooperation in Europe, *Forum for Security Cooperation. Decision No. 2/13 Vienna Document Plus Updating the Title of the United Nations Instrument for Standardized International Reporting of Military Expenditures, 13 March 2013* (Vienna: Organisation for Security and Cooperation in Europe, 2013), 1-2.

- Uzbekistan's longstanding de facto abrogation of the Vienna Document, having not provided data since 2003,⁴⁴⁴ consistent with its post-Soviet authoritarian government and poor human rights record. The country further withdrew its OSCE participation following the May 2005 shooting of protesters by government troops in the city of Andijan. It has rejected inspection and evaluation requests outright since 2007 and has remained largely absent within the FSC, AIAM and other Vienna Document-related proceedings within the OSCE;⁴⁴⁵
- Russia's repeated manipulation of information reported under the Vienna Document, along with other forms of deception and preclusion of the verification of major combined joint military exercises, including "KAVKAZ 2012" (held in the North Caucasus) and "ZAPAD 2013," (held in Western Russia, Belarus, Kaliningrad, and Baltic Sea). This included the separation of exercise components in order to remain below specified observation thresholds, along with the exhaustion of available inspection quotas through "self-inspection" (i.e., Russia inspecting Belarus). Further, the Russian ZAPAD 2013 declaration of slightly more than 22,000 troops was far short of what was later to be determined to be over 70,000 troops.⁴⁴⁶
- Russian imposition of significant additional restrictions on the physical dimensions of defined "specified areas," despite no such specifications existing in Vienna Document 2011 provisions,⁴⁴⁷ along with extensive over-declarations of areas and sensitive points to deny or otherwise impede inspection access;⁴⁴⁸ and

⁴⁴⁴ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. July 2014* (Washington: United States Department of State, 2014), 19.

⁴⁴⁵ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, OSCE Heads of Verification Meeting, 13 December 2012* (Ottawa: DND Canada, 2012), n.p.

⁴⁴⁶ Pauli Järvenpää, *Zapad-2013. "A View From Helsinki"* (Washington: the Jamestown Foundation, 2014), 8.

⁴⁴⁷ Organisation for Security and Cooperation in Europe, *Vienna Document 2011*, 33.

⁴⁴⁸ Organisation for Security and Cooperation in Europe, *Forum for Security Cooperation. Statement by the Delegation of the United States of America. 694th Plenary Meeting of the Forum, 10 October 2012* (Vienna: Organisation for Security and Cooperation in Europe, 2012), 1.

- the extensive and widespread abuse of *force majeure* provisions as a means of denying, delaying or otherwise impeding inspection and evaluation access, as exemplified by Russia's refusal of a 2012 Spanish evaluation visit request. This refusal appeared to circumvent "the common international understanding that force majeure applies to major events that are clearly outside a party's control and which would have been in any case unavoidable by a party's good faith application of due diligence to its obligations."⁴⁴⁹

As requested by the FSC Support Section, national verification organisations made a number of implementation-focused presentations at the December 2012 Heads of Verification Meeting in Vienna. During that meeting, open frustration was expressed over matters of non-compliance and non-conformity having remained inadequately addressed by the OSCE. It was once again noted that most efforts to resolve reported deficiencies had been misdirected towards making adjustments to implementation mechanisms, rather than focusing on root causes and individual accountabilities. It was made clear by some representatives that, while participating States may raise specific observations, more was required of the OSCE as the governing institution to address them in such a manner that fully respects and preserves established provisions and standards of conformity.⁴⁵⁰

Again, a range of transgressions were cited at this meeting, several of which were chronic infractions committed by select participating States in Eastern Europe, South Caucasus and Central Asia. For example, the requirement of an inspected State to provide an aircraft for the aerial survey of a specified area unless otherwise agreed

⁴⁴⁹ United States Department of State, *General Statement to the 670th Meeting of the Forum for Security Co-operation, January 18, 2012* (Vienna: United States Mission to the OSCE, 2012), n.p.

⁴⁵⁰ Department of National Defence, Strategic Joint Staff Arms Control Verification. *Conference Notes, OSCE Heads of Verification Meeting, 13 December 2012*, n.p.

(Chapter IX, Paragraph 99) remained frequently unfulfilled, despite offers by inspecting States to cover attendant costs or even employ their own aircraft. Similarly, failures or refusals to respond or otherwise acknowledge notifications transmitted via the OSCE Communications Network – particularly, Format 33 inspection requests (Chapter IX, Paragraphs 79, 86) – were becoming commonplace. Furthermore, declarations of sensitive points and areas where access would not normally be denied to inspection (Chapter IX, Paragraph 80), along with unexplained refusal of “access, entry and unobstructed survey” within specified areas (Chapter IX, Paragraph 81), had increased considerably. Indeed, along with what were becoming commonly regarded as “national procedures” ploys, an increasingly cavalier attitude had developed amongst some participating States. This was frequently reflected in frivolous or dismissive responses to inspection and evaluation requests, as well as in the substandard support provided to verification personnel during inspections.⁴⁵¹

Another important observation raised in consultations concerned the on-going disparity between actual inspection/evaluation findings and the “sanitised” interpretations reported by many inspecting states and the OSCE itself. The March 2012 OSCE/CPC Summary Report (once again stating that most inspections took place in full compliance with the regime), and the 2012 AIAM (noting mostly compliant behaviour), were specifically cited. To be fair, it was also noted that the AIAM had at least acknowledged “some problems or inconsistencies.” Omissions in some national inspection and evaluation reports were again acknowledged, having been previously discussed at past AIAM and Heads of Verification Centres meetings. Finally, it was pointed out that some national delegations to the FSC had identified implementation

⁴⁵¹ Department of National Defence, Strategic Joint Staff Arms Control Verification and Swiss Verification Unit, *Implementation Issues. Considerations for OSCE Heads of Verification Meeting* (Ottawa: DND Canada, 2012), 9-10.

deficiencies for years, with effectively no response or corrective action taken.⁴⁵² Such lack of action was consistent with what had become an established pattern of aversion by the OSCE in dealing with these faults.

In the course of general discussion, inspection/evaluation findings, national reporting and FSC analyses were criticised for containing not only interpretative variances, but also alterations designed to avoid diplomatic friction and discord. Indeed, one specified area inspection report, which had simply observed that the inspected State “was not fully compliant” for having refused an aerial survey and unnecessarily restricting the movement of inspectors, created a diplomatic uproar. This included an open display of antagonism by the inspected State’s FSC delegation towards that of the inspecting State, together with a threat of *persona non grata* made against the inspecting State’s head of verification. Moreover, informal requests were made within the FSC to “tone down” the report. This incident served to support the view that paucities in detection and accountability were enabling some participating States to push the limits of transgression and that the fundamental measures of compliance and conformity were becoming increasingly irrelevant. Given the attendant risk to regime stability, some practitioners called for the FSC to better exercise its authority as implementing body, while others recommended more direct OSCE involvement in verification operations, including the possible inclusion of CPC personnel in inspection and evaluation teams.⁴⁵³

⁴⁵² Department of National Defence, Strategic Joint Staff Arms Control Verification and Swiss Verification Unit, *Implementation Issues. Considerations for OSCE Heads of Verification Meeting*, 12.

⁴⁵³ Ibid, n.p.

The long-term effect of unabated contraventions of the Vienna Document has been most recently illustrated by the current crisis in Ukraine. While the implications of this unfolding calamity extend well beyond the scope of the Vienna Document, it nevertheless underscores the paradox of an autonomous military intervention undertaken in direct abrogation of not only that regime's provisions, but also its underlying principles, as embodied in the Helsinki Final Act.

In early March 2014, at the request of the government of Ukraine, an OSCE observation team of 56 personnel from 30 participating States was deployed to that country's southern region under hitherto unexercised Chapter III (Risk Reduction) provisions concerning "unusual military activities" in the Crimean Autonomous Republic – a federal subject of Ukraine. Although some monitoring activity was undertaken along the boundary with Crimea, access was repeatedly blocked or otherwise refused by armed pro-Russian separatists supported by un-badged and otherwise unidentified Russian military personnel.⁴⁵⁴ Subsequently, a German-led multinational verification team was arrested by separatist officials in Slovyansk and detained for approximately five weeks. Although Moscow had permitted earlier evaluation visits in the adjacent Russian regions of Belgorod and Kursk, the exhaustion of Russia's annual passive quota (with no offer by Moscow to permit additional verification) precluded further scrutiny of its significant military build-up on the Ukrainian border. Perhaps most disconcerting (but not surprising) was Moscow's failure to provide proper notification under Chapter V (Prior Notification of Certain Military Activities) or voluntarily allow visits under Chapter III (Risk Reduction) of its

⁴⁵⁴ Ariana Rowberry, "The Vienna Document, the Open Skies Treaty and the Ukrainian Crisis." *Up Front*. Brookings Institute [journal on-line]; available from <http://www.brookings.edu/blogs/up-front/posts/2014/04/10-vienna-document-open-skies-ukraine-crisis-rowberry>; Internet; accessed 7 February 2015, n.p.

activities -- involving some 40,000 troops -- despite having well-exceeded established thresholds.⁴⁵⁵

While the Ukrainian crisis exemplifies the purpose, design and utility of the Vienna Document in preventing, limiting or otherwise mitigating conflict, it also highlights the fact that, despite its comprehensive provisions, the dissidence that has developed over the years has undermined its integrity and degraded its effectiveness. While the unprecedented use of Chapter III did enable some modest observation activity, there is little question that the regime's evolved model is simply unfeasible without the necessary inducement to ensure its proper function. This includes the required actions to suitably counteract any and all infractions -- even when committed by a major regime constituent -- in order to preserve integrity. OSCE Parliamentary Assembly President Ilkka Kanerva aptly characterized the implications of this most recent assault on the Vienna Document in a December 2014 address to the OSCE Ministerial Council:

We've been faced with the greatest modern challenge to the OSCE -- a crisis in which one participating State [Russia] has ignored the Helsinki Principles, violating the sovereignty and territorial integrity of its neighbour. The crisis in and around Ukraine has generated an institutional crisis: What can the OSCE do to monitor, to defuse, to mediate? The institutional crisis has also meant a truly existential crisis: What's the point of the Helsinki Final Act if countries that have pledged to play by these rules decide not to do so?⁴⁵⁶

⁴⁵⁵ Ariana Rowberry, "The Vienna Document, the Open Skies Treaty and the Ukrainian Crisis," n.p.

⁴⁵⁶ Organisation for Security and Cooperation in Europe Parliamentary Assembly, *Address to the OSCE Ministerial Council. OSCE Parliamentary Assembly President Ilkka Kanerva 4 December 2014 Basel, Switzerland*. Copenhagen: Organisation for Security and Cooperation in Europe, 2014.

Conclusions and Implications

The Vienna Document has endured significant changes in the European and Eurasian security landscape since it was first introduced in 1990, which is testament to its elemental value as a security concept. Nevertheless, the actual manner in which the regime has been overseen and executed has highlighted serious deficiencies. As noted repeatedly, the accumulation of myriad infractions and infringements -- ranging from the innocuous to the nefarious -- left largely unchecked, has progressively reduced its effectiveness. Although Russia has figured prominently, many other participating States share some measure of culpability in having failed to maintain the standards of conduct required to preserve its viability. This, in turn, has contributed to a general loss of confidence in the concept of cooperative security, with corresponding adverse impact on peace and security in the OSCE area. Per Zdzislaw Lachowski, “while one view is that new arrangements, mechanisms and institutions are needed, others believe that the necessary instruments exist but that the political will is lacking.”⁴⁵⁷ Indeed, the Ukraine crisis exemplifies the ramifications of long-term inattention to a regime that, by its very design, should have proven itself far more effective in both precluding and counteracting such a crisis. While debate will invariably continue, it is apparent that little should be expected of a security instrument if its governance, management and execution are to be openly subjected to deliberate subversion and other forms of impairment.

⁴⁵⁷ Zdzislaw Lachowski, “Conventional arms control.” *SIPRI Yearbook 2002: Armaments, Disarmament and International Security*, Stockholm International Peace Research Institute (Oxford: Oxford University Press, 2002), 735.

While there exists collective blame for the diminishment of the Vienna Document, the OSCE, as overarching authority, must be specifically held to account. The Organisation's significant institutional growth over the years, combined with its increasingly dispersed oversight of an ever-expanding range of operations and activities, have led to increasingly perfunctory approaches adopted in the regime's governance and management. Resultant inattentiveness, along with a growing propensity to undertake systematic modifications rather than addressing core issues, has permitted a multitude of breakdowns to go largely unanswered. Metaphorically speaking, the carpenter has grown more inclined to focus upon blaming the design of his tool rather than the manner in which he uses it.

Considering that the OSCE had exercised greater authority in holding individual participating States to account in the past, the question must be asked as to why it has stepped back from doing so. If the reason has been to maintain harmony and a sense of success, then such benefit is to be short-lived, as this could be characterised as merely lowering standards in order to meet them. The situation has been further exacerbated by the apathy and diminished "stake" made by several participating States, as reflected in the decreased priority assigned and lack of investment made in implementation and training. Finally, the increased gap between ground truth and expurgated interpretation has created false perceptions, discouraging suitable corrective action.

Given the nature in which the Vienna Document has been progressively degraded over several years, its prospects of rehabilitation are unclear. Nonetheless, presupposing the necessary inducement to secure the reaffirmed commitment by all participating States to fulfil their politically-binding obligations, the OSCE would need

to similarly reassert its authority through active governance and management. This would entail the unambiguous and consistent application of prescribed provisions and standards, more direct involvement in the oversight of implementation, together with a more purposeful, disciplined approach by all concerned.

CHAPTER 5

CASE STUDY 3: THE TREATY ON OPEN SKIES

Introduction

In keeping with the specified methodology of the thesis, this chapter will examine the *Treaty on Open Skies* as a detailed case study, with due attention accorded to its purpose and distinctive attributes, along with its correlation with the CFE Treaty and Vienna Document. Key developments and notable events in the oversight and operation of the Treaty will be specifically estimated in terms of their effect upon its rudimentary function, progressive impediment and overall depreciation.

Open Skies' employment of aerial observation flights as a CSBM contrivance represents an essential consideration in its comparison with the other two regimes. This includes its concept of unrestricted overflight, more expansive jurisdiction (which includes the entire territories of Canada, the United States and the Russian Federation) and other distinctive characteristics. Underlying intelligence and technological aspects will be reviewed in detail, given their significance as both stimuli and impediments to the Treaty's viability. The roles of the United States and the Russian Federation, as the preeminent States Parties of the Treaty, will also be specifically scrutinised with a view to both sides' manipulation of and influence over the regime as means of gaining respective advantage. Consistent with the other case studies, non-compliance and non-conformity will be examined as specific indicators of the breakdowns in the regime's operating model that have increasingly degraded its viability.

This examination will illustrate that, as a strategic reconnaissance-based CSBM, the Open Skies Treaty has been unencumbered by the armament and equipment categorisations, ceilings, zones and personnel levels inherent with the CFE Treaty and Vienna Document. Nevertheless, in spite of its corresponding simplicity and proven effectiveness, the Treaty has been similarly impaired by various operative impairments that its oversight and management have largely failed to counteract. Varied and growing capability disparities have further exacerbated this impairment. While the two major States Parties -- the Russian Federation and the United States -- can be expected to sustain Open Skies in fulfilment of their respective agendas, the Treaty will nonetheless become increasingly imbalanced and corrupted without suitable restorative action. This begins with the reestablishment of the accord required to ensure common adherence to the Treaty's binding provisions, as established.

Backdrop

As previously noted, the *Treaty on Open Skies* was signed on 24 March 1992 by 26 NATO and former WTO states. Although ratified by most signatories it in the early 1990s, the Treaty did not enter-into-force until January 1, 2002, following an extensive process of ratification in the Russian Federation, Belarus and Ukraine. Since then, eight more European states have acceded to the Treaty (Kyrgyzstan was an original signatory but has yet to ratify).⁴⁵⁸ With the concept of an aerial observation regime first introduced in 1955, the Treaty represents the culmination of an extensive and prolonged effort to increase openness and transparency in military activities through the

⁴⁵⁸ Hartwig Spitzer, "News from Open Skies: A co-operative treaty maintaining military transparency," *VERTIC Brief*, 9 February 2009 [journal on-line]; available from <http://www.vertic.org/media/assets/VERTIC%20Brief%208%20FINAL.pdf>; Internet; accessed 22 February 2015, n.p.

employment of manned reconnaissance aircraft used to freely overfly, observe and image anything of interest or concern anywhere within a given State Party's territory. This relatively simple model enables the gathering of information through the direct aerial observation of what are commonly referred to as "objects" of verification, concern or interest, such as military installations and formations, industrial complexes, and transportation centres. The Open Skies "concept" therefore established an innovative mechanism through which States Parties could attain levels of predictability, stability and confidence that otherwise would have been largely unattainable.

Formally stated, the Treaty seeks to "improve openness and transparency" through intrusive, direct airborne observation and imaging. A legally-binding regime, it also serves to "facilitate the monitoring of compliance with existing or future arms control agreements and to strengthen the capacity for conflict prevention and crisis management."⁴⁵⁹ Open Skies imagery can therefore be used to support other conventional and nuclear arms control and security mechanisms through validating coordinates, confirming the presence and configuration of infrastructure and equipment, or monitoring specific activities. As an unclassified (albeit treaty-sensitive) resource, Open Skies imagery and associated data can be far more readily utilised in diplomatic and broader public settings than that derived from classified sources.⁴⁶⁰ While the Treaty is generally characterised as a CSBM regime, its framework of largely unrestricted aerial reconnaissance and survey flights has afforded a broad constituency

⁴⁵⁹ Conference on Security and Cooperation in Europe, *Treaty on Open Skies* (Vienna: Conference on Security and Cooperation in Europe, 1992), 1.

⁴⁶⁰ Congress of the United States, *Congressional Ratification/Testimony* (Letter from Committee on Armed Services to Committee on Foreign Relations) (Washington: Congress of the United States, 1997), n.p.

of states with unprecedented means of acquiring a wide range of information about military forces and activities of interest or concern at their individual discretion.⁴⁶¹

In addition to supporting other security mechanisms, Open Skies serves as a stand-alone mechanism of intrusive early warning, observation/verification and enhanced transparency in its own right. With each State Party availing all of its territory to aerial observation and imaging, the Open Skies Treaty constitutes what is arguably one of the most potent and extensive security mechanisms ever established. Indeed, as noted in United States Congressional ratification testimony, “the Treaty represents the broadest international effort to date to promote openness and transparency of military forces and activities.”⁴⁶² Given its conceptual simplicity, the Treaty also constitutes one of the “purest” forms of a CSBM -- one that is completely unfettered by quantitative or normative restrictions on military forces (i.e., personnel, weapon systems and equipment). Rather, its only limitations are procedural (observation mission quotas, flight profiles, etc.) and technical (aircraft and associated observation/imaging systems).

Notwithstanding this relative simplicity, the unbounded transparency of the Open Skies concept has brought with it considerable challenges over the course of its long-term negotiation and ratification. The United States Congress’ Office of Technology Assessment characterised the Treaty’s negotiation process as “a much more nebulous and subjective task than devising schemes for monitoring compliance with

⁴⁶¹ Congress of the United States Office of Technology Assessment, *Verification Technologies: Cooperative Aerial Surveillance in International Agreements* (Washington: United States Government Printing Office: 1991), 49.

⁴⁶² Congress of the United States, *Congressional Ratification/Testimony* (Letter from Committee on Armed Services to Committee on Foreign Relations), n.p.

specific agreements.”⁴⁶³ It specifically noted the “deep divisions” that existed between the United States and the Soviet Union concerning the level of invasiveness necessary to establish a viable regime. This was largely a function of comparative national capabilities (i.e., the United States’ possessing sensor superiority),⁴⁶⁴ with Washington seeking “maximal intrusiveness.”⁴⁶⁵ Moscow, on the other hand sought “restrictions on all aspects of the overflights,” given its natural resistance to such scrutiny, along with its wariness of the Treaty’s “vague” objectives.⁴⁶⁶ While most NATO and former WTO states favoured a “middle ground” approach, they leaned towards “more” rather than “less” transparency when pressed, as this was ultimately advantageous to their own national interests.⁴⁶⁷

Notwithstanding various compromises in progressing negotiations towards a final consensus, the advantages of maximising Open Skies’ inherent concept of intrusiveness and transparency had, for the most part, prevailed. The final accord had successfully secured all signatories’ entire territories for aerial observation, including restricted or sensitive areas, zones and sectors that would otherwise be precluded from any kind of overflight as a matter of national security. This intrusiveness was further reinforced by according Open Skies missions due priority over all regular air traffic, with the only restrictions to observation flight mission profiles involving matters of flight safety.⁴⁶⁸

⁴⁶³ Congress of the United States Office of Technology Assessment, *Verification Technologies: Cooperative Aerial Surveillance in International Agreements*, 49.

⁴⁶⁴ Dan Lindley, “Cooperative Airborne Monitoring: Opening the Skies to Promote Peace, Protect the Environment, and Cope with Natural Disasters,” (Notre Dame: University of Notre Dame, 2006), 5.

⁴⁶⁵ Congress of the United States Office of Technology Assessment, *Verification Technologies: Cooperative Aerial Surveillance in International Agreements*, 49.

⁴⁶⁶ Ibid, 3, 49, 55.

⁴⁶⁷ Ibid, 49.

⁴⁶⁸ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 14-15.

The Treaty is of unlimited duration and affords all States Parties with effectively the same opportunity through which to observe and acquire imagery. This has proven to be tremendously empowering, as irrespective of comparative wealth, capabilities, and associated technologies, all States Parties are generally enabled in obtaining meaningful strategic reconnaissance data on their own terms. The Treaty further “levels the playing field” by instituting specified standards for approved aircraft, sensors and imagery resolution, along with rigorous procedures for observation flight mission profiles. As such, States Parties lacking integral “national technical means”⁴⁶⁹ are provided the technical and operational wherewithal through which to effectively monitor the military activities of other states – a capability that had previously been limited to few nations.⁴⁷⁰

The Treaty also established a new benchmark in interstate relations by requiring the conduct of States Parties to stand up to the unrestricted scrutiny of a codified airborne observation regime. That is, the employment of short-notice observation flights to scrutinise any given State Party’s military disposition, posture and intent imposes a normative standard that surpasses categorised technical measurements -- a particularly valuable tool during periods of increased tension. Therefore, as an unconstrained early warning and threat assessment resource, Open Skies can alleviate unwarranted military escalation, thereby raising the threshold of potential conflict. Moreover, the Treaty’s unrestricted observation overflight mandate inherently enables it to transcend the purely military context of security. That is, the Open Skies concept enables it “to contribute in a variety of institutional contexts without being limited to any particular set of activities or institutional frameworks,” rendering it especially

⁴⁶⁹ “National technical means” is a term that commonly denotes independent verification monitoring capabilities, such as satellite imaging and other forms of intelligence gathering used to confirm compliance and conformity with arms control regimes.

⁴⁷⁰ Federation of American Scientists, “The Open Skies Treaty.” *Federation of American Scientists* [journal-on-line]; available from <http://fas.org/nuke/control/os/index.html>; accessed 3 December 2014.

versatile and effectual.⁴⁷¹ Indeed, the Treaty's potential for broadened application, such as supporting environmental protection, is specifically noted in its preamble.⁴⁷² This could conceivably result in the employment of new sensors, such as air sampling devices, to enable the monitoring of pollution or other forms of environmental degradation, or even as means of aiding the implementation of highly complex security mechanisms, such as the Chemical or Biological Weapons Conventions.⁴⁷³

The establishment of specified active and passive observation flight quotas -- with no right of refusal -- along with the full accessibility to all acquired imagery by any State Party, further reinforces Open Skies' highly effectual CSBM concept.⁴⁷⁴

All 34 states currently party to the Open Skies Treaty are member states of the OSCE, with Canada and Hungary serving as the Treaty's Depositories.⁴⁷⁵ The Treaty is of unlimited duration and is open to accession by any state in the following order of priority:

- successor states of the former Soviet Union have the right of automatic accession at anytime;
- an application by any other OSCE member states may be made at any time; and

⁴⁷¹ United States Department of State, *Treaty on Open Skies: Article-by-Article Analysis* [journal-on-line]; available from <http://www.state.gov/t/avc/cca/os/106812.htm>; Internet; accessed 15 January 2015, n.p.

⁴⁷² Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 1.

⁴⁷³ Dan Lindley, "Cooperative Airborne Monitoring: Opening the Skies to Promote Peace, Protect the Environment, and Cope with Natural Disasters," 17.

⁴⁷⁴ Congress of the United States, *Congressional Ratification/Testimony* (Letter from Committee on Armed Services to Committee on Foreign Relations), n.p.

⁴⁷⁵ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 28.

- following the initial six-month period following the Treaty's entry-into-force (i.e., since 1 July 2002), any other state may now apply for accession.⁴⁷⁶

In the second two cases, applications for accession require the approval of the OSCE's Open Skies Consultative Commission (OSCC). The OSCC is the OSCE's dedicated oversight and consensus-based decision-making body, consisting of representatives from each State Party with a rotational chair, which serves to "promote the objectives and facilitate the implementation of the provisions of this Treaty."⁴⁷⁷ Through its regular monthly meetings and supported by the OSCE Conflict Prevention Centre (CPC), the OSCC manages the technical, procedural, and financial matters associated with Treaty implementation, including those related to compliance and conformity. The OSCC is also discharged with resolving ambiguities and interpretative variances, while also addressing all technical and administrative requirements.⁴⁷⁸

A Unique Regime

In comparison with other proliferation security-related regimes, the Open Skies Treaty is conceptually simpler, but nevertheless technically and procedurally complex, comprising 19 articles, 12 annexes and three appendices. In addition, the decisions rendered by the OSCC are legally binding and are considered integral to the Treaty. Most of the Treaty's more elaborate elements concern the inherent intricacies of observation flight operations. A synopsis of the Treaty's principal components is provided at Appendix C.

⁴⁷⁶ Ibid, 28.

⁴⁷⁷ Ibid, 24.

⁴⁷⁸ Ibid, 95-97.

Further to this summation, an overview of key characteristics is warranted, in order to provide sufficient background. As previously stated, under the Treaty, all State Parties possesses the right to conduct observation flights, along with the obligation to accept them over their respective territories. During the observation flight, flight monitors from the observed State Party accompany observation flight mission crews, which may also include flight representatives from other States Parties, as arranged with the observing State Party. Per Article III and Annex A, both “active” and “passive” observation flight quotas are established for each State Party. The “active quota,” is the specified number of observation flights that a given State Party shall have the right to conduct over the territory of another; whereas the “passive quota” is the specified number of observation flights each State Party must accept over its own territory. Quotas are established on an agreed basis, which, along with the maximum distance assigned to observation flight missions themselves, take into account the geographic size of each State Party. A State Party’s “active quota” cannot exceed its “passive quota;” moreover, a single State Party cannot request more than 50% of another State Party’s “passive quota.” Each year, requests for observation flights are submitted to the OSCC and all other States Parties for consensus-based approval.

While flight quotas are determined in advance of any given year of application, in keeping with the intrusive nature of the regime, Article VI specifies that the actual observation flight missions themselves may be conducted with as little as 72 hours’ notice (typically transmitted via the OSCE Communications Network). Open Skies mission platforms are specifically configured, unarmed fixed-wing aircraft, certified under Article VI of the Treaty. Generally, these are modified military transport aircraft that vary from medium-range turbo-prop aircraft (such as the Swedish Saab 340B or

Antonov AN-26) to long-range heavy transport jets (currently, the Tupolev TU-154M and the American OC-135B). While a given State Party typically employs its own certified aircraft (or that of another State Party, as agreed), the observed State Party may, per Article VI, exercise the right to employ its own certified aircraft under the so-called “taxi-option.”

To maximise intrusiveness, the observing State Party will notify the observed State Party of its estimated time of arrival no earlier than 72 hours in advance, to which a reply must be transmitted within 24 hours of receipt. Following arrival at the designated Open Skies point of entry, the observing State Party must provide a mission plan to the observed State Party at least 24 hours prior to the observation flight. The observed State Party may propose modifications and, under certain circumstances, deviations from the submitted mission plan may also be allowed. Unless otherwise agreed, the observation mission must be completed within 96 hours of the observing State Party’s arrival in the observed State Party, with the observing State Party departing the designated point of entry within 24 hours following the termination of the observation flight.⁴⁷⁹

As an added measure of transparency and consistent with the other two regimes, Article VI stipulates that for any given observation flight, the observing State Party is required to generate a corresponding mission report that will be distributed to all States Parties. Furthermore, per Article IX, a copy of all data collected by the observing State Party shall be provided to the observed State Party, while other States Parties have the option of acquiring the data collected by the observing State Party at the cost of

⁴⁷⁹ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 11-17.

duplication. Under Annex K, representatives of the observed State Party may monitor processing and duplication of mission media at its discretion. These are important transparency provisions, providing State Parties with a quantity of observation data that would be impossible to acquire individually. Corroboration of processing, combined with the associated chain of custody of acquired imagery provides an added measure of validation and fidelity.

The Treaty specifies four types of sensors that may be employed for observation flights. They are:

- optical panoramic and framing cameras (with 30-centimetre ground resolution);
- video cameras with real-time display (with 30-centimetre ground resolution);
- infrared line scanning devices (with 50-centimetre ground resolution); and
- sideways-looking synthetic aperture radars (with three-metre ground resolution).⁴⁸⁰

While sensor types and performance may be modified through agreement under Article IV, the ground resolution currently established has been purposely limited in such a way as to enable sufficient visual discernment of military weapons, equipment, infrastructure and forces in order to fulfil, but not exceed, the Treaty's fundamental transparency requirements. As an added measure of parity, all sensors employed under

⁴⁸⁰ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 8.

the Treaty must be commercially available to all States Parties. As noted by Dan Lindley, because of its cooperative nature, the Treaty does not need to “push the state of the art” in surveillance technology. Furthermore, in keeping with the Treaty’s “enabling” concept, this approach also limits higher costs in acquisition and operation through the use of “off-the-shelf” technologies.⁴⁸¹

The Intelligence Connection

As the Treaty affords States Parties with a highly structured and stipulated means of strategic reconnaissance, its sensor-resolution specifications raise a critically important point concerning the delineation between strategic transparency and strategic intelligence. Such delineation is difficult, as transparency commonly involves the acquisition of sufficient information to support trust and confidence, whereas intelligence generally entails the exploitation of such information. The question is the degree of exploitation that is achievable to support intelligence. Therefore, in order to preclude the acquisition of information beyond Treaty objectives, image resolution is purposely limited:

Description of an object requires much improved resolution in order to provide precise dimensions, configuration, construction of components (e.g., by specifying the calibre of the gun of a tank). Description is usually seen as part of intelligence. A resolution capability that would enable description of major land weapons systems (like tanks, artillery or combat aircraft) are clearly excluded by the Treaty for all sensor categories.⁴⁸²

⁴⁸¹ Dan Lindley, “Cooperative Airborne Monitoring: Opening the Skies to Promote Peace, Protect the Environment, and Cope with Natural Disasters,” 13.

⁴⁸² Hartwig Spitzer and Rafael Wiemker, “Image Analysis And Data Assessment: What Can Be Learnt From Open Skies Image Data?” In *Open Skies. A Cooperative Approach to Military Transparency and*

The limited resolution established under the Treaty is further characterised by Dan Lindley as follows:

...although Open Skies cameras in Europe and North America permitted by the Treaty are much better than commercial satellites and are good enough to detect large-scale strategically significant actions, they still fall far short of easily achieved much higher resolutions. Their capabilities are limited for political and military reasons.⁴⁸³

With regard to the parameters imposed by the Treaty upon image resolution, it is important to further consider that such limitations apply to the “raw” electro-optical, video, infrared and radar images acquired by Open Skies sensors and not to subsequent processing. In fact, there exist a range of post-mission image enhancement processes and other means of exploitation that can be employed, subject to the capabilities of a given State Party. Therefore, while the Treaty enables the observation and imaging of “strategically significant” objects and activities, while limiting the resolution required for outright intelligence exploitation, Open Skies platforms and sensors nevertheless enable varying degrees of subsequent intelligence-related analysis, including capability assessment.⁴⁸⁴

Within the proliferation security community, it is relatively common knowledge that the national intelligence entities of several States Parties provide “objects of verification, interest and concern” to Open Skies mission planners as “observation

Confidence Building, P. Dunay, *et al* (Geneva: United Nations Institute for Disarmament Research, 2004), 104.

⁴⁸³ Dan Lindley, “Cooperative Airborne Monitoring: Opening the Skies to Promote Peace, Protect the Environment, and Cope with Natural Disasters,” 21.

⁴⁸⁴ Department of National Defence, Strategic Joint Staff Arms Control Verification *General Orientation Briefing*, 8 March 2010 (Ottawa: DND Canada, 2010), 22.

targets” for programmed overflight.⁴⁸⁵ While post-mission intelligence exploitation remains subject to the technical means and wherewithal of those States Parties so inclined, the value of observation flight media in this regard simply cannot be discounted. Indeed, the nature and inherent capabilities afforded by the Treaty have led it to be nicknamed “Open Spies” by some operators.⁴⁸⁶ To be sure, regardless of the Treaty’s specified purpose (i.e., aerial monitoring to achieve CSBM and supporting the compliance objectives of other arms control regimes), Open Skies capabilities commonly supplement national intelligence collection efforts. That is, terms of collateral intelligence, Open Skies aerial observation missions provide a dedicated source of detection and cuing, threat characterisation and assessment, as well as further corroboration to customary national technical means, including satellites.⁴⁸⁷

In terms of strategic reconnaissance, Open Skies capabilities, despite its imposed and physically intrinsic limitations, also provides distinctly unique advantages. While many space-based observation platforms are superior to airborne platforms in several respects, the opposite is also true. For example, the image resolution of Treaty-specified electro-optical sensors is better than most commercial space-based systems and its infrared sensors are, generally speaking, vastly superior to even dedicated reconnaissance satellites.⁴⁸⁸ Furthermore, whether they are commercial or government assets, the tasking of a reconnaissance satellite to prosecute a particular object or area of interest is usually a difficult and expensive proposition. It is also frequently technically

⁴⁸⁵ Department of National Defence, Strategic Joint Staff Arms Control Verification *General Orientation Briefing*, 8 March 2010, 22.

⁴⁸⁶ Ibid, n.p.

⁴⁸⁷ Congress of the United States Office of Technology Assessment, *Verification Technologies: Cooperative Aerial Surveillance in International Agreements* (Washington: United States Government Printing Office: 1991) 15-16.

⁴⁸⁸ Dan Lindley, “Cooperative Airborne Monitoring: Opening the Skies to Promote Peace, Protect the Environment, and Cope with Natural Disasters,” 28.

impossible. It is also noteworthy that a number of intelligence satellite constellations have degraded or become increasingly fragile over time, as acknowledged by Alden V. Munson Jr., United States Deputy Director of National Intelligence for Acquisition.⁴⁸⁹ Indeed, Moscow's acquiescence to Open Skies was largely pragmatic in this respect. Given the declining numbers and degraded performance of Russian reconnaissance satellites, Open Skies became increasingly favoured as cost-effective means of "closing the gap" in strategic reconnaissance, while at the same time conserving limited remaining on-orbit resources.⁴⁹⁰ A research report prepared for the State Duma stated: "[In] summary, we can conclude that the Treaty on Open Skies is advantageous to Russia, and allows for some compensation of Western superiority in obtaining information with minimal expenditures."⁴⁹¹ This follows the general view that airborne observation systems are comparatively simpler, more flexible, more reliable and far more cost-effective than their space-based counterparts.⁴⁹²

Flexibility, reliability, sensor performance and costs are not the only comparative criteria. By virtue of their physical characteristics, most satellites cannot achieve the low, oblique "look angles" attained by airborne observation platforms. Indeed, aircraft sensors oriented sideways from low observation flight paths enable the imaging of objects that may be covered or located inside structures with large openings. On-board infrared and synthetic aperture radar sensors, capable of day/night operation,

⁴⁸⁹ Philip Taubman, "In Death of Spy Satellite Program, Lofty Plans and Unrealistic Bids," *The New York Times*, 11 November 2007, 1.

⁴⁹⁰ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War* (Stanford: Stanford University Press, 2014), 153.

⁴⁹¹ *Council Meeting of the State Duma with Attachments*, Excerpts from the Minutes No. 5, Federal Assembly of the Russian Federation, 10 February 2001, as cited by Pál Dunay and Hartwig Spitzer in "The Open Skies Treaty Post-Signature," in *Open Skies. A Cooperative Approach to Military Transparency and Confidence Building*, Pál Dunay, et al (Geneva: United Nations Institute for Disarmament Research, 2004), 62.

⁴⁹² Allen V. Banner, et al, *Aerial Reconnaissance for Verification of Arms Control Agreements. An Introduction*. (New York: United Nations Institute for Disarmament Research, 1990), 164.

can also penetrate certain light structures and materials (synthetic aperture radar also resists attenuation in poor weather), further enhancing airborne applications.

As acknowledged by the United States Defense Security Institute (USDDSI), the simultaneous use of Open Skies sensors enables a combination of vertical and oblique images to be effectively “layered,” thereby producing three-dimensional images capable of providing additional object detail, including the specific physical dimensions of structures and other objects.⁴⁹³ Such capability has led USDDSI to advise that, despite Treaty-imposed sensor limitations, “...imagery collected during Open Skies overflights will provide a significant amount of information that cannot be acquired by commercial satellites.”⁴⁹⁴

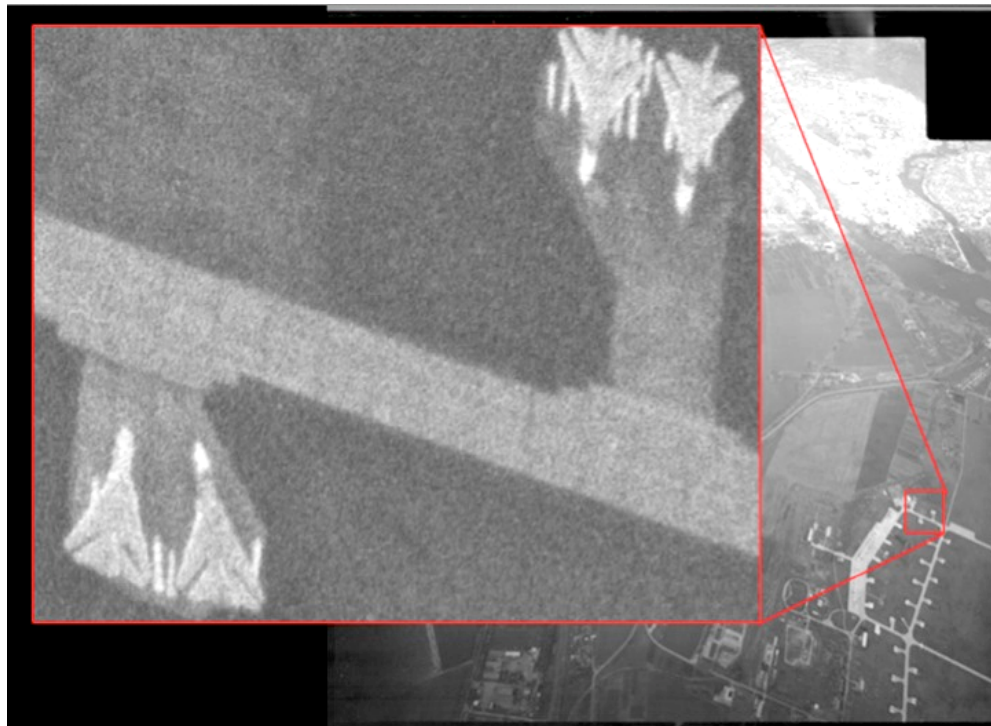


Figure 5.1: Example of Open Skies Treaty mission imagery⁴⁹⁵

⁴⁹³ Department of Defense Security Institute, *Security Awareness Bulletin 1-97* (Richmond: United States Government Printing Officer, 1997), n.p.

⁴⁹⁴ Department of Defense Security Institute, *Security Awareness Bulletin 1-97*, n.p.

⁴⁹⁵ Department of National Defence, Strategic Joint Staff Arms Control Verification photo.

Given these capabilities, it is not surprising that the United States developed an “Open Skies Notification System” to provide sensitive facilities with advance warning and updated information concerning when they could be overflown and imaged during a given observation flight mission by another State Party (in the United States, with the exception of an early trial flight conducted by Ukraine and collaborative training missions, this has consisted solely of missions conducted by the Russian Federation):

Facilities are advised to carefully assess the risks posed by Open Skies observation flights. Outdoor activities or indicators such as power sources, ventilation systems, cooling ponds, and pollution-affected vegetation could potentially reveal proprietary, national security-related, or other sensitive information.⁴⁹⁶

Notification and preparedness systems also exist in other States Parties to protect sensitive assets and to otherwise prepare installations and facilities for potential imaging. This also ensures that a given overflight mission is received and supported in compliance and conformity with Treaty provisions. In Canada, for example, an Operation PASSIVE SKIES “warning order” is typically generated upon receipt of the requisite overflight notification from the Russian Federation, which includes various advisory and coordinating instructions, including background, capabilities and associated precautionary measures for sensitive sites and installations.⁴⁹⁷

Irrespective of the Treaty’s formal objectives, is evident that, depending upon the manner of employment and subsequent processing of data, the capabilities afforded

⁴⁹⁶ Ibid, 7.

⁴⁹⁷ Department of National Defence, *Combined Warning Order - Operation Passive Skies 2/14 and Operation Transit Skies 2/14* (Ottawa: Department of National Defence, 2014), n.p.

by Open Skies observation aircraft and sensors can constitute de facto national technical means in their own right – a key point that will be touched upon further in this chapter.

Early Implementation

During the Treaty's extended period of ratification (largely resulting from internal political turmoil, on-going suspicions of the West and cost-related concerns in Russia, Belarus and Ukraine⁴⁹⁸), training and testing activities were undertaken from 1992 until entry-into-force on 1 January 2002. This entailed the conduct of "joint trial flights" that enabled the training of observation flight mission crews, along with the necessary testing and calibration of specified sensors and related equipment. The flights also afforded the opportunity to address other important technical and procedural issues, including the establishment of common certification standards.⁴⁹⁹ By the end of 2000, more than 400 joint trial flights had been conducted. With the exception of Iceland, all signatories were involved, along with non-member states (including Estonia, Finland, Latvia, Lithuania, Slovenia and Sweden), which were, at that time, considering accession.⁵⁰⁰ The Russian Federation's initial involvement in these flights was extremely limited, however, with only two undertaken in 1995. This increased to between 14 and 18 joint trial flights yearly from 1997 to 2001, signalling a change in Moscow's outward approach to Open Skies.⁵⁰¹

⁴⁹⁸ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 152.

⁴⁹⁹ Organisation for Security and Cooperation in Europe, "Signing of Treaty on Open Skies," *Who We Are* [journal-on-line]; available from <http://www.osce.org/who/timeline/1990s/06>; Internet; accessed 15 January 2015, n.p.

⁵⁰⁰ Ernst Britting and Hartwig Spitzer, "The Open Skies Treaty," *Verification Yearbook 2002*, ed. Trevor Findlay and Oliver Meier (London: Verification Research, Training and Information Centre, 2002), 227-229.

⁵⁰¹ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 152.

To be sure, in the years immediately following the signing of the Treaty, there remained deep suspicions within the Russian military and security establishments. This had been further exacerbated by NATO expansion, which had now rendered the Russian Federation the top priority of a growing number of States Parties' active quotas. For Moscow, there were also some worrisome cost implications resulting from its early insistence on the "taxi option;" that is, an observed State Party's option to use its own aircraft for observation overflights conducted by other States Parties.⁵⁰² While presumably providing a measure of added security, this option was nevertheless a very expensive proposition, given Russia's passive quota of 42 flights annually.⁵⁰³

While political upheaval and resultant security-related anxieties in the immediate post-Soviet era had contributed to the prolongation of the ratification process, the suspicion of and resistance to the Treaty by Russian defence and intelligence establishments began to moderate with key political developments, including the succession of President Boris Yeltsin by Vladimir Putin and the political "steadyding" that ensued. Concurrent with these developments was a growing realisation of the security advantages the Treaty could provide, which had become increasingly evident as the Treaty's concept continued to be demonstrated in its initial implementation phase. As previously noted, this included its potential in reducing the disparity in strategic reconnaissance capability owing to the general decline of Russian space-based resources. Also noteworthy was Moscow's subsequent decision to drop its insistence upon exercising the "taxi option;" initially for its eastern Open Skies point of

⁵⁰² Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 31.

⁵⁰³ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 152.

entry, Ulan Ude and then altogether, relieving it of considerable added expense.

Although this provision remains in effect, Moscow has yet to exercise it.⁵⁰⁴

As specified under Article XVIII of the Treaty, implementation was “phased-in” over a three-year period, during which passive quotas were decreased by 25 percent, with sensor types and performance requirements reduced (only a single electro-optical panoramic or pair of framing cameras required at less than maximum capability). Accordingly, since 1 January 2005, full passive quotas have been observed, with all sensor types specified under the Treaty permitted.⁵⁰⁵

Broadly speaking, the initial period of Open Skies Treaty implementation following its entry-into-force was somewhat understated, receiving relatively little fanfare or official reporting by the OSCE. Indeed, much early effort had been focused upon the initial tranche of aircraft and sensor certifications which, given the associated technical complexity, were accomplished in relatively short order. In April 2002, the Hungarian, Russia/Belarus and Ukraine certifications (involving Antonov AN-26, and AN-30B twin-engine turboprop aircraft) were completed at Nordholz Naval Air Station in Germany. The American Boeing OC-135B certification was completed at Wright-Patterson Air Force Base in May. The ten-nation “Pod Group” C-130 Hercules “H” model certification was completed in June at Brecy Airbase in France (the C-130 Pod Group – a consortium comprising Belgium, Canada, France, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal and Spain, employed the “Special Avionics Mission Strap-on Now (SAMSON) Pod” as a common mission system aboard their respective C-130 aircraft). This was followed by the British Andover MK1 and

⁵⁰⁴ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 152, 155.

⁵⁰⁵ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 30.

Romanian AN-30B certifications at Royal Air Force Station Brize Norton in July.⁵⁰⁶

Subsequent certification of the Russian long-range TU-154M, the Swedish Saab-340B and the Turkish Casa CN-235 would take place at Nordholz in April 2004.⁵⁰⁷

In August 2002, the first operational Open Skies observation flight mission was conducted by the Russian Federation over the territory of the United Kingdom. By 31 December 2003, a total of 67 observation flight missions had been successfully completed. This included a total of seven missions conducted by the United States over Russia/Belarus⁵⁰⁸ and one shared mission with Canada over Ukraine.⁵⁰⁹ It wasn't until 2004 that the Russian Federation conducted its first Open Skies missions in North America; namely, over the United States in June and over Canada in September.⁵¹⁰

The first OSCE Annual Report to make any real mention of the Treaty's implementation was in 2003, but only in reference to the fact that the newly modernised OSCE Network was being employed to exchange military information, including that pertaining to Open Skies.⁵¹¹

In its 2005 Annual Report, the OSCE positively noted the visit of its Mediterranean Partners for Cooperation (comprising Algeria, Egypt, Israel, Jordan,

⁵⁰⁶ Ernst Britting, and Hartwig Spitzer, "The Open Skies Treaty," *Verification Yearbook 2002*, 230.

⁵⁰⁷ Márton Krasznai, "Post Ratification Phase and Entry into Force," in *Open Skies. A Cooperative Approach to Military Transparency and Confidence Building*, 99.

⁵⁰⁸ Russia and Belarus constitute a single "Group of States Parties," per the Treaty's Article II Definitions.

⁵⁰⁹ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. August 2005* (Washington: United States Department of State, 2005), 93.

⁵¹⁰ Open Skies Consultative Commission, U.S. Delegation, *Open Skies Observation Flights Since EIF* (Vienna: Organisation for Security and Cooperation in Europe, 2012), 3.

⁵¹¹ Organisation for Security and Cooperation in Europe, *Annual Report on OSCE Activities 2003, Security and Cooperation for Europe* (Vienna: Organisation for Security and Cooperation in Europe, 2004), 117.

Morocco and Tunisia) at Melsbroek Airbase, Belgium, (the main operating base of the “C-130 Pod Group”) where they received briefings and demonstrations of the Open Skies concept. The event was hosted by the Belgian Verification Agency, with officials from the OSCE Chairmanship and Secretariat, along with military representatives from Luxembourg and the Netherlands in attendance. At that time, there was interest expressed in the possible adaptation of the Treaty (an aspiration noted in its Preamble⁵¹²) to the Mediterranean region. Accordingly, Belgian officials provided an orientation of the C-130 SAMSON Pod. With the Treaty’s entry-into-force and certification of the C-130 SAMSON Pod having only occurred in 2002, the interest shown and efforts made to promote the Open Skies concept was, indeed, encouraging.⁵¹³

As might be expected with any initial period of implementation, a number of early “teething problems” necessitated various adjudicative efforts to be undertaken within the OSCC. The majority of issues were technical, procedural and administrative in nature, such as the methodology for determining minimum permissible altitudes, frequency of data annotation, protection of data, designated airfields, the accession of signatories, cost redistribution, and quota allocations. Other issues (several of which continue today) have included those pertaining to aircraft and equipment specifications and procedural standardization, along with corresponding air regulations.⁵¹⁴ The United States Department of State explicated these early challenges as follows:

⁵¹² Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 1.

⁵¹³ Organisation for Security and Cooperation in Europe, *2005 Annual Report on OSCE Activities* (Vienna: Organisation for Security and Cooperation in Europe, 2006), 31.

⁵¹⁴ Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, “OSCC Decisions,” *Treaty Compliance. ACQ Web* [journal-on-line]; available from: http://www.acq.osd.mil/tc/treaties/os/oscc_index.htm; Internet; accessed 13 January 2015, n.p.

Because the Treaty is lengthy and contains portions that are technically detailed, there were several issues that arose during the first two years of Treaty operations. Issues that have initially raised compliance concerns are implementation-oriented, and can largely be attributed to different interpretations and understandings of various Treaty provisions by the different States Parties as new (and often unanticipated) situations were encountered during the nascent stages of Treaty implementation.⁵¹⁵

Indeed, early interpretive variances and misunderstandings of the Treaty's provisions were largely addressed through OSCC consultation and adjudication. Given the Treaty's technical and procedural orientation (as opposed to the quantitative and normative orientation of other regimes) much of the OSCC's efforts have remained focused on issues of this nature, with no fewer than 160 decisions formally rendered by the end of 2013.⁵¹⁶ Observation quota redistribution issues arising from the accession of additional States Parties and NATO expansion added to these challenges. Quotas have, in fact, remained an ongoing issue, particularly with respect to Russia:

The distribution of flight quotas has been a source of concern since the treaty entered into force. In accordance with a gentlemen's agreement among its member states, NATO agreed not to carry out inspections on the territory of the alliance. As the number of NATO members significantly increased, each member state was free to use its active quota to inspect non-members. The most strategically important of the non-members - Belarus, Russia and Ukraine - have been the most 'in demand' for this purpose, and the result is a largely asymmetric pattern of flights.⁵¹⁷

⁵¹⁵ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*. August 2005, 93-94.

⁵¹⁶ United States. Office of the Under Secretary of Defense for Acquisition, Technology and Logistics. "OSCC Decisions," *Treaty Compliance*. ACQ Web, n.p.

⁵¹⁷ Zdzislaw Lachowski and Pál Dunay "Conventional arms control and military confidence building," *SIPRI Yearbook 2005: Armaments, Disarmament and International Security*, Stockholm International Peace Research Institute (Oxford: Oxford University Press, 2005), 667.

The 2015 passive quota distribution, as specified at Annex A of the Treaty and revised through OSCC Decision, is as follows:

BENELUX: 6	Bulgaria: 4	Bosnia-Herzegovina: 4
Canada: 12	Croatia: 4	Czech Republic: 2
Denmark: 6	Estonia: 4	Finland: 5
France: 12	Georgia: 4	Germany: 12
Greece: 4	Hungary: 4	Iceland: 4
Italy: 12	Latvia: 4	Lithuania: 4
Norway: 7	Poland: 6	Portugal: 2
Romania: 6	Russia/Belarus: 42 ⁵¹⁸	Slovak Republic: 2
Slovenia: 4	Sweden: 7	Spain: 4
Turkey: 12	United Kingdom: 12	United States: 42
Ukraine: 12 ⁵¹⁹		

As demonstrated by the characteristically high subscription to the Russian/Belarusian passive quota, the noted “asymmetry” is, therefore, a function of both capacity and circumstance. For example, in the OSCC distribution for 2015, NATO States Parties, along with Finland and Sweden, reserved 38 of the 42 Russian/Belarusian observation overflights available. In comparison, only six of the United States’ passive quota of 42 flights were reserved – all by Russia and Belarus.⁵²⁰ As such, the Russian Federation and Belarus are presently far more exposed to aerial surveillance than any other States Parties. Moreover, while calculated as a function of territorial size, the maximum distances established under Annex A for individual observation flights conducted over Russia and Belarus (i.e., 5,000 to 6,500 kilometres,

⁵¹⁸ As a designated “Group of States Parties,” under Article II, the Russian and Belarusian passive quota is combined.

⁵¹⁹ Open Skies Consultative Commission, *Decision No. 2/15 Distribution of Active Quotas for Observation Flights in the Year 2015* (Vienna: Organisation for Security and Cooperation in Europe), 7.

⁵²⁰ Open Skies Consultative Commission, *Decision No. 2/15 Distribution of Active Quotas for Observation Flights in the Year 2015* (Vienna: Organisation for Security and Cooperation in Europe), 7.

depending upon the mission point of origin) have been generally regarded by Moscow as disadvantageous.⁵²¹ Russia's dissatisfaction has been further compounded by the general lack of available imagery for purchase from missions by non-Russian observation flights over NATO States Parties.

Given Moscow's noted intent to address other deficiencies in information collection through its subscription to the Treaty, it is understandable that it would also wish to address this disparity. Of course, the manner in how it would attempt to do so represents a recurrent facet of this thesis; that is, 1) the tendency to diverge from established provisions when national objectives cannot be otherwise attained; and 2) the integrity of the regime's operating model in overcoming this tendency. For example, during the provisional application phase, both Russia and Ukraine notified States Parties that, in addition to changing designated Open Skies airfields (permissible under the Treaty), they were unilaterally reducing the associated minimum flight distances already established (for which there existed no provision). These reductions were intended to reduce the territory available for observation, thereby necessitating additional observation flights to acquire the same amount of observation imagery as means of offsetting the aforementioned disproportion.⁵²² Following strong protests by other States Parties, the OSCC rendered a decision clearly stipulating that the observation overflight "coverage" of States Parties' territories was to be maintained in such a manner as to not require additional flights.⁵²³ To ensure this, no State Party would be permitted to decrease maximum flight distances established for its original operating airfields, as listed under Annex A of the Treaty. Further, while a State Party could

⁵²¹ James J. Marquardt, *Transparency and American Primacy in World Politics* (Burlington: Ashgate Publishing Company, 2011), 130.

⁵²² Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. August 2005*, 94.

⁵²³ *Ibid*, 94.

introduce new operating airfields, they were to ensure the same level of “effective observation” in the maximum flight distances assigned to those airfields and that the overall number of designated airfields could not be decreased from the number established at the time of the decision.⁵²⁴

While the OSCC’s response and resultant decision appear entirely appropriate, the unilateral actions of Moscow and Kiev that necessitated this in the first place (i.e., rather than consulting on the matter) illustrate the proclivity of certain States Parties to “push” the limits of interpretation, including the imposition of so-called “national procedures.” Such actions are generally consistent with mainstream international law theory; that is, states will violate or otherwise deviate from a given regime “when their interests are strong enough to outweigh their sense of obligation.”⁵²⁵ In this instance, a combination of perceived unfairness and general disaccord by Russia and Ukraine provided a sense of justification in “claiming” vice “seeking” the adjustments in maximum flight distances. Such action highlights the importance of the “normative strength” of a regime’s model in sustaining a common “sense of obligation” to preserve its integrity through compliance and conformity.⁵²⁶

Growing Disorder

Because of its relative simplicity and absence of quantitative and categorised measurements, the Open Skies Treaty has been less encumbered than the CFE Treaty

⁵²⁴ Open Skies Consultative Commission, *Decision No. 3/04 Changes To Open Skies Airfields And Associated Maximum Flight Distances* (Vienna: Organisation for Security and Cooperation in Europe, 2004), 1-2.

⁵²⁵ Eric Posner and Jack L. Goldsmith, "International Agreements: A Rational Choice Approach," *Virginia Journal of International Law* 113 (2003): 115.

⁵²⁶ Eric Posner and Jack L. Goldsmith, "International Agreements: A Rational Choice Approach:" 115.

and Vienna Document in several respects. Nevertheless, even at the outset, various impairments to implementation were not merely the result of interpretative variances and misunderstandings, but also inherent bureaucratic inefficiencies and deliberate actions to limit the ability of States Parties to fulfil their objectives under the regime. The nature of these impairments is largely consistent with the other two regimes. Examples include the withholding of requisite designated airfield and national airspace information required to ensure the safe and effective execution of observation overflights, denial of specific flight mission routings or profiles, and refusal to accept notified observation flight missions altogether.

As reported by the United States Bureau of Arms Control, Verification and Compliance, subsequent to announced changes to Russian and Belarusian Open Skies points of entry and operating airfields in 2002 (i.e., four operating airfields to 10, along with 15 refuelling airfields), data required by a 1 April deadline, as specified under Annex I of the Treaty, was not provided.⁵²⁷ Moscow had stated that due to the reorganisation of national airspace, the information would be necessarily delayed. Later that same year, the United States was compelled to push for this information through various diplomatic channels, including bilateral consultations held in Moscow. While some information was eventually provided, it was, nevertheless, incomplete.⁵²⁸

This matter highlights a growing lack of OSCC oversight of the Treaty's implementation, in that the United States had been compelled to engage the Russian Federation directly in order to impart the associated imperative and acquire more

⁵²⁷ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*. August 2005, 95.

⁵²⁸ *Ibid*, 95.

information. Certainly, given the very specific provisions of Annex I to the Treaty and in fulfilment of critical flight safety requirements, the matter of delayed information should have been more fully and urgently addressed within the OSCC itself. Indeed, Annex I provisions underscore this urgency, requiring that no earlier than 90 days following entry-into-force, a State Party must provide specified airspace information in accordance with International Civil Aviation Organization provisions within 30 days of a request for such information by another State Party. This includes information pertaining to airspace structure, as published in the *Aeronautical Information Publication* series; detailed information on all hazardous airspace; and airfield information, including arrival/departure procedures for each point of entry and point of exit; designated Open Skies airfields; and alternate/refuelling airfields for all points of entry/exit. Additionally, no later than 90 days after entry-into-force, each State Party must notify all other States Parties of the source of this information. Finally, States Parties are required to notify other State Parties that have requested this information of any changes to the information provided.⁵²⁹

While Washington's bilateral efforts did lead to some information being released by Moscow later that year, it was generally incomplete, necessitating additional requests from Washington. This, in turn resulted in the delay or cancellation of United States observation overflight missions:

The U.S.-Russian dialogue on required airfield data has been a long, complex, and iterative one. Each time we have asked for information, the Russians have

⁵²⁹ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 91.

provided only some of that information, and sometimes not in the most useable format.⁵³⁰

Moscow's outright refusal to accept a United States observation flight notification the same year was similarly problematic. In subsequent discussion within the OSCE, it was determined that the principal reason for this refusal was driven by logistical constraints. That is, Russia was insufficiently resourced to receive and support a United States observation aircraft and crew at the designated airfield (Klin Airbase, located about 100 kilometres northwest of Moscow), given the established 72-hour notification and in particular, the fact that arrival would occur during a weekend. In their representations, American officials in Vienna pushed the Treaty's "no right of refusal" provision, which ultimately prevailed. Nevertheless, as a result of this difficulty, an informal understanding was reached, whereby weekends and holiday periods would be avoided, if possible, in the execution of observation flight missions in Russia. This approach was similar in nature to the Vienna Document Plus Decision 10/10 and subsequently incorporated in the Vienna Document 2011 to "take into account the information, which the participating States exchange on an annual basis, on official national and religious holidays of the receiving State."⁵³¹ While a planning consideration only, the potential for this convention to be misinterpreted, thereby undermining the intrusive nature of an observation mission flight mission, was apparent. As such, the United States maintained that, notwithstanding this consideration, it nevertheless reserved the right to conduct observation flight missions on weekends and

⁵³⁰ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*. August 2005, 97.

⁵³¹ Organisation for Security and Cooperation in Europe, *Vienna Document 2011* (Vienna: Organisation for Security and Cooperation in Europe: 2011), 32, 39.

holidays, as required.⁵³² Despite this assertion, varied interpretations of how weekend and holiday periods would ultimately be “factored in” to mission planning and execution have remained particularly problematic “sticking points” in the implementation of the Treaty.

In 2003, Ukraine refused a duly notified joint Canada-United States observation flight over a specific portion of the planned mission route. The grounds of this refusal were that the portion of the route in question was within designated hazardous airspace and as such, would not be permitted. The combined mission crew refused to accept this rationale on the grounds that it constituted a contravention of Article VI provisions, which state:

The mission plan may provide for an observation flight that allows for the observation of any point on the entire territory of the observed Party, including areas designated by the observed Party as hazardous airspace in the source specified in Annex I.⁵³³

In this instance, as the established deadline for flight plan approval approached, Ukrainian officials agreed to permit a one-time exception for the mission as planned, with the stipulation that this concession would not set a precedent. As the Ukrainian position clearly indicated a lack of understanding of Treaty provisions, but did not impact the mission, the matter was deferred to the OSCC for resolution.⁵³⁴ Shortly thereafter in Vienna, representatives of the two observing States Parties approached the

⁵³² Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*. August 2005, 72.

⁵³³ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 91.

⁵³⁴ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Verification Mission Report - Operation ACTIVE SKIES #5/03* (NATO RESTRICTED - releasable excerpt) (Ottawa: DND Canada, 2003), n.p.

Ukrainian delegation on the matter. The Ukrainian delegation reiterated its position prohibiting overflights in hazardous airspace; however, it advised that the matter would be reviewed. It was not until 2004, following extensive bilateral engagement between the United States and Ukrainian delegations to the OSCC, that Ukraine finally accepted the right of overflight in hazardous airspace as specified in Article IV. It should be further noted that, as reported by the United States Department of State, Ukrainian officials had demonstrated “a desire to fully understand the issue and resolve it,” indicating that this was actually more a matter of misinterpretation, rather than one of obstinacy or deliberate wrongdoing.⁵³⁵ Indeed, following its initial period of adjustment after independence, Ukraine has been progressively compliant and cooperative in the fulfilment of its Treaty obligations. This conduct is generally consistent with Kiev’s efforts to improve cooperation with the United States, the European Union and NATO as means of counterbalancing its traditional strategic relationship with Moscow.⁵³⁶

These early events again denote a fundamental, yet important distinction between interpretative variances and deliberate actions as forms of “defection” from a given regime.⁵³⁷ In this instance, despite Ukraine’s initial disagreement to allow access to designated hazardous airspace, its prudent decision to permit a “one-time” overflight, along with its willingness to engage in further consultations leading to its eventual acceptance of Article IV particulars, enabled it to remain effectively compliant. The manner in which the Russian Federation acted, however, constitutes an entirely different and arguably characteristic manner of conduct. That is, Moscow’s subjective

⁵³⁵ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*. August 2005, 98.

⁵³⁶ Steven Pifer, “Ukraine’s Perpetual East-West Balancing Act,” 28 February 2014, *Up Front*, Brookings Institution [journal-on-line]; available from <http://www.brookings.edu/blogs/up-front/posts/2014/02/28-ukraines-perpetual-east-west-balancing-act-pifer>; Internet; accessed 22 May 2015, n.p.

⁵³⁷ Robert Axelrod, *The Evolution of Cooperation*, (New York: Basic Books, 1984), 7-10.

interpretation of and selective adherence to legally-binding obligations, combined with general “foot-dragging” were indicative of not only a growing lack of regard for its conformity with the Treaty, but also where the desire to further advantage itself had outweighed the sense of obligation to conform. In both cases, early detection and rectification were equally critical to preserving the Treaty’s fundamental integrity and viable implementation. As noted earlier, Robert Axelrod specifically regarded early detection as a critical requirement in preventing an offender with further incentive to “defect.”⁵³⁸ Here, a lack of “provocability,” on the part of the OSCE was clearly demonstrated. That is, despite its awareness, it largely left the matter to the States Parties to work out between themselves. This is noteworthy, as the somewhat diffused manner in which matters such as these have been addressed has remained an on-going and increasingly problematic issue for the Treaty.

2005 Open Skies Review Conference

As mandated under the Treaty, the first Open Skies Review Conference was held 14-16 February 2005, under the chairmanship of Germany. The conference largely served as a means of taking stock of the Treaty’s implementation to that point, as well as considering various facets of continued implementation. Consistent with the Treaty’s overall low profile, the Review Conference was a somewhat understated affair, with little media coverage or public awareness.⁵³⁹ Mindful of the objective to expand the regime, however, the organisers invited representatives from the OSCE Mediterranean and Asian Partners for Cooperation, of which Israel, Japan, Jordan, Morocco, South Korea and Tunisia attended (with Afghanistan, Algeria and Egypt declining), indicating

⁵³⁸ Robert Axelrod, *The Evolution of Cooperation*, 185.

⁵³⁹ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 155-156.

both the broad applicability and growing appeal of the Open Skies concept. Indeed, support for the Treaty was on an upswing, with Estonia and Lithuania announcing their respective ratifications, and impending accessions. Most importantly, the fundamental value and effectiveness of the Treaty as a CSBM regime were strongly endorsed.⁵⁴⁰ At a time of growing acrimony within the OSCE community concerning the CFE Treaty and, to some extent, the Vienna Document, this was a particularly positive indication that some degree of unity had been sustained in a major OSCE regime; i.e., “The treaty’s review conference in early 2005 demonstrated that many states parties value the achievements of this aspect of European arms control and wish to maintain its relevance.”⁵⁴¹

Despite this important endorsement, the aforementioned “imbalance” in observation flight mission quota distribution had developed into an underlying source of discontent for the Russian Federation, which continued to view itself as generally disadvantaged under the regime. While the Russia-Belarus Group of States Parties alone conducted more than a third of the 71 observation missions flown in 2004, only three of these missions were flown in North America. By 2005, the ratio of missions conducted by the United States over Russia/Belarus to those conducted by Russia/Belarus over the United States was approximately 5:1. Other NATO and neutral States Parties had also continued to specifically focus their missions on Russia/Belarus and Ukraine (along with Georgia, Croatia and Bosnia-Herzegovina).⁵⁴² Accordingly, Moscow remained largely “shut out” from acquiring copies of mission media of

⁵⁴⁰ Hartwig Spitzer, “A rare example of Euro-Atlantic accord: The Open Skies Review Conference” (Hamburg: Universität Hamburg, 2005), 1-2.

⁵⁴¹ Zdzisław Lachowski and Pál Dunay “Conventional arms control and military confidence building,” *SIPRI Yearbook 2005: Armaments, Disarmament and International Security*, Stockholm International Peace Research Institute, 673.

⁵⁴² Open Skies Consultative Commission, U.S. Delegation, *Open Skies Observation Flights Since EIF*, 2-4.

interest; i.e., that of the United States in particular and other NATO countries generally. In comparison, the United States, Finland, Germany, Sweden and Ukraine were actively acquiring imagery from flights over Russia/Belarus conducted by other States Parties.⁵⁴³ While the flight quota distribution did not develop into a “cause célèbre” at the conference, it was nevertheless noted as a matter warranting further consideration; i.e.:

The States Parties discussed aspects of quota distribution, recognizing that effective January 1, 2006, 100 percent of active quotas will be available for distribution. The States Parties agreed that the Open Skies mechanism of quota distribution should reflect the principles of equity, reciprocity and cooperation, and that the OSCC may further review this mechanism after January 2006.⁵⁴⁴

While the lack of imagery of interest to Moscow was acknowledged, the established mathematical model employed for determining the passive quotas (territorial size and border-to-border distances) of States Parties continued to render this imbalance largely moot. Moreover, NATO States Parties (increasingly augmented by former WTO States Parties joining the Alliance) continued to refrain from overflying another as a matter of internal policy.⁵⁴⁵ Neutral States Parties were either uninterested or incapable of conducting observation overflights of the United States and NATO States Parties of interest to Moscow. Accordingly, lacking a revised flight quota formula or providing some form of an “exception” for the Russian Federation, the only realistic means of redress would be for Russia and Belarus to conduct more observation overflights themselves.

⁵⁴³ Hartwig Spitzer, “A rare example of Euro-Atlantic accord: The Open Skies Review Conference,” 1.

⁵⁴⁴ Open Skies Consultative Commission, *OSCC.RC/45/05 Statement by the Chairman of the First Review Conference on the Implementation of the Treaty on Open Skies at the Closing Plenary 16 Feb 2005* (Vienna: Organisation for Security and Cooperation in Europe, 2005), 2.

⁵⁴⁵ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 153.

The conference also noted various issues concerning the certification of observation aircraft, rules of procedure, sensors, notification formats, and flight rules. While recognising the need to address these implementation issues, the conference deferred them to the applicable OSCE Informal Working Groups (Rules and Procedures; Certification) for resolution. Similarly, on sensor-related issues, updates of associated documents and facilitation of the certification of all sensor categories (including infrared systems) were noted as matters to be addressed by the OSCE Informal Working Group on Sensors.⁵⁴⁶

There were two particularly notable concerns raised regarding the status and future of the Treaty. First, during the conference, France, Germany and Sweden proposed the expansion of the Treaty's mandate to include:

- protection of the environment, as noted in the Treaty's preamble; and
- conflict prevention/crisis management within the OSCE framework and in support of other international organisations, as conditionally provided for under Annex L (Extraordinary Observation Flights).⁵⁴⁷

The majority of delegations rejected such a broadened mandate. One reason cited was the vulnerability and exposure of unarmed Open Skies observation aircraft, which typically fly at low altitudes and airspeeds. Accordingly, a permissive operating environment was deemed the necessary general condition for conducting observation

⁵⁴⁶ Open Skies Consultative Commission, *OSCC.RC/45/05 Statement by the Chairman of the First Review Conference on the Implementation of the Treaty on Open Skies at the Closing Plenary 16 Feb. 2005*, 2.

⁵⁴⁷ Hartwig Spitzer, "A rare example of Euro-Atlantic accord: The Open Skies Review Conference," 1.

flight missions. Otherwise, the use of Open Skies platforms for the purposes outlined in the proposal was left to discretion of individual States Parties.⁵⁴⁸

Second, the matter of Cyprus' accession to the Treaty had struck a negative chord within the conference. Turkey had vetoed Cyprus' application for accession in 2002 and singularly objected to officially noting that the application remained pending. Consequently, the consensus required to issue a final document for the conference could not be reached. Cyprus' outstanding candidacy for accession was instead acknowledged in a separate Chairman's Statement.⁵⁴⁹ Although Hartwig Spitzer observed that there was a sense that this matter would not alter States Parties' intentions to adhere to the Treaty in the future, the Cyprus issue would subsequently serve to significantly undermine the oversight and management of the Treaty.⁵⁵⁰

Accordingly, while the 2005 Review Conference provided an important reaffirmation of Open Skies' value as a CSBM regime, underlying elements of discord and various unresolved infringements would prove increasingly difficult to overcome in following years, adding to the overall degradation of conventional arms control.

Evolving Implementation

During the five years following the first Review Conference, the Treaty realised a general upswing in the number of observation flights, whereby 100 or more missions were being conducted annually. They are summarised as follows:

⁵⁴⁸ Loïc Simonet, "Open Skies: successes and uncertainties of an iconic post-Cold war instrument," *OSCE Magazine* Issue Number 1, 2012: 20-21.

⁵⁴⁹ Hartwig Spitzer, "A rare example of Euro-Atlantic accord: The Open Skies Review Conference," 2.

⁵⁵⁰ *Ibid*, 2.

- 2005: 84 flight missions conducted;
- 2006: 106 flight missions conducted;
- 2007: 108 flight missions conducted;
- 2008: 106 flight missions conducted;
- 2009: 100 flight missions conducted; and
- 2010: 103 flight missions conducted.⁵⁵¹

Given the increased level of observation flight mission activity over this period, it is evident that the benefits of Treaty implementation were outweighing the liabilities. Nevertheless, on-going disparities and interpretive variances were joined by issues ranging from trivial technical and procedural disagreements to those potentially impairing the safe and effective execution of observation flight missions. Regardless of their individual nature or significance, all served to place additional stress upon the regime, particularly when left unresolved.

Minor implementation issues included continued “squabbling” within the OSCC over an increasing number of requests made to suspend Open Skies mission requests during holidays and other specified periods. That is, despite the Treaty’s fundamental precept of “no right of refusal,” an OSCC decision to take holiday periods and weekends into account as a planning consideration had led some States Parties to adopt the notion that holidays and other designated periods constituted a temporary suspension of receiving overflight requests as a “given.” As an example of the effects

⁵⁵¹ Open Skies Consultative Commission, U.S. Delegation, *Open Skies Observation Flights Since EIF*, 4-16.

of the interpretative subjectivity of this planning consideration, during an OSCE meeting in May 2008, the Russian delegation reacted harshly to objections made over its request to defer observation flight missions in Russia during a specific national holiday period in April (due to the closure of airports and hotel facilities).⁵⁵² The Russian delegation head, Alexander Kozlov, accused other States Parties of treating the Russian Federation unfairly:

Recalling a Latvian request in June of 2006 for no Open Skies activity from November 15 to December 15 due to the NATO Ministerial, Kozlov wondered why no States Parties objected to Latvia's request at the time and accused the U.S. and others of "double-standard."⁵⁵³

While Kozlov's point was valid to some extent, the fact of the matter is that Latvia's request had little, if any effect in practical terms. While both actions were arguably "self-serving," the Russian request bore considerably more impact. Another example concerns the requirement for an observing State Party to provide the observed State Party with a complete "first generation duplicate," of the original mission media film prints, in accordance with Sections II and IV of Article IX of the Treaty. This includes the specified right for the observed State Party to specify the "type and format of duplicate recording medium, either negative or positive film, or magnetic tape." During this period, the Russian Federation was only able to "duplicate positive film," because their media processing facility was incapable of producing a duplicate negative. While much less of an issue for some States Parties, this constituted a more significant

⁵⁵² Department of State, *08USOSCE123 Open Skies Treaty: May 5 OSCE Plenary: Russian Accusation of "Double Standard,"* 6 May 2008 (Vienna: United States Delegation to the OSCE, 2008), n.p.

⁵⁵³ Department of State, *08USOSCE123 Open Skies Treaty: May 5 OSCE Plenary: Russian Accusation of "Double Standard,"* 6 May 2008 n.p.

matter for the United States (likely driven by post-mission analytical requirements), which cited this deficiency as Russian non-compliance under Article IX.⁵⁵⁴

While some deviations from the Treaty's specified provisions may have reflected various degrees of interpretive difficulty or limited capacity to effectively comply, deliberate actions -- such as placing "national procedural" limitations above fundamental Treaty requirements -- are another matter altogether, as they knowingly place individual state interests ahead of binding obligations. Left unaddressed, such contraventions develop into a specific source of regime destabilisation. In this regard, the Russian Federation's actions concerning prohibited airspace and other restrictions imposed upon observation flights exemplify how the contravention of Article VI provisions concerning "the observation of any point on the entire territory of the observed Party,"⁵⁵⁵ would develop into a specific challenge to the Treaty's viability and that of conventional arms control regimes in general.

UUP-53 is a 1,200 square kilometre area of prohibited airspace over the centre of Moscow, extending to 3,600 meters in altitude. Until 2006, the area was previously designated UUP-33, which comprised approximately 2,000 square kilometres with no vertical limitation. Refusing to permit observations flights through this airspace, Russian authorities originally asserted that imaging of its surface area from the periphery was possible, with the employment of panoramic cameras. This, however, was proven to be technically impossible, even after the area was reduced in size and a ceiling "cap" established in 2006 to better enable imaging. The inability to fly within

⁵⁵⁴ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. July 2010* (Washington: United States Department of State, 2010), 80, 83.

⁵⁵⁵ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 14-15.

As noted by a senior Open Skies specialist from the Canadian Strategic Joint Staff, refusal of flight through UUP-53 has been a particular source of consternation; that is, to be effectively “shut out” of overflying Moscow’s city centre, while the Russian TU-154M observation aircraft has been permitted to fly directly over Ottawa’s Parliament Hill at the specified altitude required for its sensors. While Russian officials have long maintained that the primary reasons for not permitting flight through UUP-33/53 are safety-related (i.e., low-altitude flight over the city’s high population density centre), they have been unable to justify their own exceptions for low-level flight displays put on by Russian military aircraft over Red Square during annual Victory Day celebrations and other occasions.⁵⁵⁸

Another impediment to Treaty implementation entails Moscow’s imposition of flight restrictions upon Open Skies observation flights conducted over Chechnya and various areas in south-western Russia beginning in 2002, and within 10 kilometres of its border with Georgia’s South Ossetia and Abkhazia regions since 2010.⁵⁵⁹ The 10 kilometre restriction was craftily imposed in 2010 under the pretext of Article VI provisions that state that “the flight path of an observation aircraft shall not be closer than, but shall be allowed up to, ten kilometres from the border with an adjacent State that is not a State Party,”⁵⁶⁰ although these regions are within a State Party’s (i.e., Georgia’s) internationally recognised borders.

⁵⁵⁸ Canadian Strategic Joint Staff official, interview with the author, National Defence Headquarters, Ottawa, 10 April 2015.

⁵⁵⁹ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. July 2014* (Washington: United States Department of State, 2014), 33-34.

⁵⁶⁰ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 14-15.



Figure 5.3: Restricted Airspace over Chechnya and adjacent regions.⁵⁶¹

As notified in a July 2002 OSCE F35 notification message to all States Parties, the Russian Federation had established a “special regime of flight” over Chechnya (including portions of adjacent Russian oblasts), which was to remain in effect “until counter-terrorism operations in connection with the inability to ensure safety” were completed.⁵⁶² Of interest, notwithstanding the abrogation of Article VI provisions, this restriction has remained in place, despite Moscow’s formal announcement of the cessation of its counter-terrorism operations on 15 April 2009.⁵⁶³ These restrictions have had particular ramifications for Georgian officials who, in the wake of the August 2008 conflict with Russia over South Ossetia, observed that, despite the announced troop withdrawals, Moscow had continued to maintain considerable military forces

⁵⁶¹ Based upon coordinates provided from Russian National Nuclear Risk Reduction Centre, *OS/RU/02/049/F35/0 Miscellaneous 31100ZJUL02*, n.p.

⁵⁶² Russian National Nuclear Risk Reduction Centre, *OS/RU/02/049/F35/0 Miscellaneous 31100ZJUL02* (Moscow: RNNRRC, 2002), n.p.

⁵⁶³ British Broadcasting Corporation, “Russia ‘ends Chechnya operation’,” *BBC News*, 16 April 2009 [journal-on-line]; available from <http://news.bbc.co.uk/2/hi/europe/8001495.stm>; Internet; accessed 16 February 2015, n.p.

within the zone, located adjacent to Georgia's northeast border. As such, there clearly appeared to be an ulterior motive to Moscow's sustainment of its flight restrictions.⁵⁶⁴

Moscow had established three other restricted areas (A4900/08, A4901/08, and A4887/08) in the North Caucasus in August 2008 (at the time of Russia's conflict with Georgia in South Ossetia), again stating flight safety as the reason. During the late summer and fall of that year, States Parties attempting to overfly and image various portions of Russia's North Caucasus territory were either forced to modify their flight plans or cancel their missions entirely, under protest.⁵⁶⁵ In early September 2008, Russian officials refused a joint Canadian-Norwegian-Spanish C-130 overflight of the North Caucasus on trivial technical grounds concerning the manufacturing labels displayed on the SAMSON Pod's camera lenses. Despite this so-called infraction, the observing crew was advised that overflight of Russian territory outside of the North Caucasus would be permissible. The mission was therefore cancelled under protest and subsequently addressed at the OSCC, where very strong remonstrations were made by Canada, Norway and Spain, in addition to those made directly with Russian officials.⁵⁶⁶ When Moscow subsequently lifted the restriction, Canada leased a Swedish Saab-340B aircraft in December in order to conduct the previously planned mission route/profile and quota. Despite reduced daylight, low cloud and aircraft icing issues, this second attempt technically fulfilled its specified objectives.⁵⁶⁷ Nevertheless, having been conducted three months later, this second mission was of diminished value, given that Moscow had effectively obviated the attainment of the original objective; that is, to

⁵⁶⁴ Department of National Defence, Strategic Joint Staff Arms Control Verification. *Meeting Notes, Georgian Verification Centre Visit, 28-30 July 2009* (Ottawa: DND Canada, 2007), n.p.

⁵⁶⁵ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. July 2010*, 81-84.

⁵⁶⁶ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

⁵⁶⁷ Department of State, *09USOSCE14_a Open Skies: January 26 Plenary And IWGRP*, 2 February 2009 (Vienna: United States Delegation to the OSCE, 2009), n.p.

overfly and image designated observation targets during a specific period of heightened security sensitivity.⁵⁶⁸ Therefore, while Moscow had indeed relented to an observation overflight of the North Caucasus, the three-month delay had rendered this an acceptable concession, given that the principal objective to deny the original mission had been attained.⁵⁶⁹

Given both the essential nature and unambiguous language of Article IV and VI provisions, the imposition of flight restrictions upon Open Skies observation missions represents a critical problem by impeding the fundamental ability of States Parties to exercise their rights and fulfil their obligations under the Treaty. Some interpretive variances notwithstanding, the manner in which these restrictions have been imposed and subsequently addressed illustrates again the risk of insufficient “provocability.” Despite the issue being repeatedly raised within the OSCC (including the Informal Working Group on Rules and Procedures), these problems have been largely left to be “worked out” amongst the involved States Parties themselves, with little consequence for the offending State Party. This again highlights OSCC’s high tolerance for States Parties’ transgressions, along with the “passivity” of several OSCC plenary/working group chairs in addressing them. As noted in national reporting, bilateral consultations at the working and senior levels have, at best, only partially resolved the matter of unilaterally-imposed flight restrictions. As such, it remains on the agenda of the Informal Working Group on Rules and Procedures.⁵⁷⁰

⁵⁶⁸ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

⁵⁶⁹ Ibid.

⁵⁷⁰ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*. July 2010, 81-84.

Moscow's formal recognition of the independence of Abkhazia and South Ossetia as sovereign states on 26 August 2008 has been similarly problematic.⁵⁷¹ Although largely rejected by the international community, Moscow's recognition was immediately translated into its strict prohibition of Open Skies observation flight missions occurring over Russian territory within 10 kilometres of its borders with those two breakaway regions of Georgia, based upon Article VI provisions and the premise that they were not States Parties to the Treaty. Russian authorities also objected to Open Skies flights conducted over Georgian territory within 10 kilometres of South Ossetia's and Abkhazia's internal boundaries with other portions of Georgia, but obviously had less direct procedural control over such flights. Indeed, while the employment of panoramic cameras within 10 kilometres of boundaries enabled some observation and imagery acquisition of these regions, this was limited at best. Regardless, such flights also served to exercise Treaty rights, as well as to reinforce the recognition of Georgia's internationally recognised borders. Nevertheless, Moscow's 2010 deployment of the S-300 (NATO designation: SA-20 Gargoyle) mobile air defence missile system in Abkhazia added a sobering new planning consideration. Given the S-300's ability to provide surface-to-air missile coverage for both Abkhazia and South Ossetia, the emplacement of this sophisticated air defence system clearly demonstrated a degree of resolve by Moscow that few States Parties would likely wish to challenge on the basis of principle.⁵⁷²

While Moscow's position with respect to Abkhazia and South Ossetia has been repeatedly challenged by other States Parties within the OSCC, it remains unresolved.

⁵⁷¹ RIA Novosti, "Russia recognises Georgia's breakaway republics -2," *Sputnik International*, 26 August 2008 [journal on-line]; available from <http://sputniknews.com/russia/20080826/116291407.html>; accessed 18 February 2015, 1.

⁵⁷² Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

Indeed, while in an aberrant sense technically consistent with Article VI, this position clearly demonstrates the upshot of selective adherence to provisions when advantageous to do so. Additionally, the lack of any action taken to engage Moscow either the OSCC or OSCE as a whole denotes a troubling proclivity for tolerance and tractability, even for a consensus-based organisation. Left largely unaddressed, this problem remains yet another serious impairment to the effective implementation of the Treaty.

It is somewhat ironic that, in the midst of the August 2008 Georgia-Russia conflict, the milestone 500th Open Skies observation flight mission was flown. The flight was conducted by Benelux over Bosnia and Herzegovina, with flight representatives from Canada, the Czech Republic and Norway aboard. This achievement was enthusiastically commemorated the preceding July at a meeting of the 46th session of the OSCC, during which 500 multi-coloured balloons were released by delegates outside of OSCE headquarters at the Hofburg Palace in Vienna.⁵⁷³

Given the overall state of relations within the OSCE community in 2010, it is understandable that such milestone would be so celebrated. With the United States serving as OSCC chair at the time, Paula DeSutter, the Assistant Secretary of State for Verification, Compliance, and Implementation stressed that “even when issues have come up in the course of implementation, the ensuing dialogues always have been carried out in a professional, serious and nonthreatening manner.”⁵⁷⁴ DeSutter also emphasised that Russian support for Open Skies was particularly valuable, given

⁵⁷³ Organisation for Security and Cooperation in Europe, “Military officials release 500 balloons to mark milestone in Open Skies treaty,” *Newsroom*, 14 July 2008 [journal on-line]; available from <http://www.osce.org/fsc/49919>; Internet; accessed 18 February 2015, n.p.

⁵⁷⁴ Jacquelyn S. Porth, “Milestone of 500 Open Skies Flights Celebrated,” *IIP Digital*, 14 July 2008 [journal on-line]; available from <http://iipdigital.usembassy.gov/st/english/article/2008/07/20080714124534sjhtrop1.223391e-02.html#axzz3Xapxn5WV>; Internet; accessed 18 February 2015, n.p.

Moscow's suspension of its compliance with the CFE Treaty. She noted the Open Skies Treaty's "calming effect" in demonstrating that Russia had not rejected all of its arms control commitments.⁵⁷⁵ Nevertheless, the reality was that left largely unchallenged, Moscow was characteristically fulfilling its commitments only where and as long as it was advantageous to do so. Accordingly, despite the outward appearances of the 500th flight mission achievement, serious implementation issues remained largely unresolved and as such, were compounding themselves.

2010 Open Skies Review Conference

The Second Review Conference on the Open Skies Treaty was held at OSCE Headquarters from 7 to 9 June 2010, under the chairmanship of the United States. Nearly two years following the Georgia-Russia conflict, the conference was decidedly upbeat in overall tone, despite the general acknowledgement that serious issues existed and even greater challenges lay ahead in effectively implementing and sustaining the regime. An early highlight of the conference was a video address made by United States Secretary of States Clinton, noting the success of Open Skies as one of the most successful CSBM regimes ever established, along with a strong reaffirmation of United States' commitment to both its sustainment and advancement.⁵⁷⁶ Not to be outdone, the Russian Federation's opening statement, while expressing specific concerns (including it being the most observed State Party, with 65 percent of all conducted missions) was also decidedly positive:

⁵⁷⁵ Jacquelyn S. Porth, "Milestone of 500 Open Skies Flights Celebrated," *IIP Digital*, 14 July 2008, n.p.

⁵⁷⁶ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, Second Open Skies Treaty Review Conference, 1-9 June 2010* (Ottawa: DND Canada), n.p.

Looking back at the years that have elapsed since the signing of the Treaty, we have become even more convinced that the conclusion of the Treaty on Open Skies was one of the most important political acts in the OSCE area, ensuring the development of confidence, openness and transparency among the States that signed that document in 1992 or acceded to it in subsequent years. The Treaty in fact has become a unique and unparalleled multinational instrument for strengthening confidence and security in a huge region.... I should like to reiterate the Russian Federation's commitment to the fundamental bases of the Treaty on Open Skies that have confirmed their viability during the period of its implementation. We trust that the atmosphere of co-operation, mutual respect and understanding that has evolved among the States Parties to the Treaty on Open Skies will be preserved and strengthened.⁵⁷⁷

In the midst of the generally propitious mood of the conference, the Georgian delegation provided a sobering reminder of the regime's overall faultiness and fragility in failing to resolve outstanding implementation issues. Specifically, the Georgian delegate raised objections to the restrictions imposed upon a joint Romania-United States mission conducted in the Russian Federation the previous month, which had sought to fly within 10 kilometres of Abkhazia. Georgia's statement, while diplomatically indelicate to some, nevertheless provided a valid appraisal of the impact and continued risk associated with unresolved implementation issues:

... the Russian Federation has deliberately and illegally restricted the right of the states parties arising from the OS regime to full territorial access on the territory of the observed party. We consider this as an attempt on the part of the Russian Federation to exploit the Treaty on Open Skies to achieve its own political goals. This is absolutely unacceptable and must not be tolerated. Acts such as this by Russia contradict the spirit and goals of the Treaty and threaten to erode this

⁵⁷⁷ Ministry of Foreign Affairs, *Statement by the Head of the Delegation of the Russian Federation at the Opening Session of the Second Review Conference on the Implementation of the Treaty on Open Skies* (Vienna: Permanent Mission of the Russian Federation to the OSCE, 2010), 1, 4.

important component of European Security Architecture. Unfortunately, by such actions as this one Russia “successfully” continues to contribute to the erosion of the arms control regime in Europe. In behaving in this way, Russia has once again attempted to justify the forced redrawing of internationally recognized borders and the violation of international law.⁵⁷⁸

Notwithstanding the momentary “jolt” of the Georgian statement, proceedings gravitated back to the principal thematic of the conference. In a more favourable reflection upon implementation, delegates noted the successful completion of more than 670 flights since the Treaty entered-into-force, along with more than 100 flights being conducted annually.⁵⁷⁹ In reviewing and considering the overall status of the Treaty, particular emphasis was placed upon the technical modernisation and expanded orientation of the regime. This included presentations by the Informal Working Group on Sensors and others on the critically important transition of mission imagery from analogue-based cameras and wet film to advanced digitised imaging sensors and associated media. There were also presentations and representations by States Parties on successor aircraft; information on new approaches to data retrieval, access and archiving; and further discussions of broadening the Treaty mandate to include environmental monitoring and disaster response.⁵⁸⁰

Delegations acknowledged the enormity of effort and cost that the planned transition to advanced observation systems represented. Nevertheless, given the associated imperatives, there appeared to be general recognition of the considerable

⁵⁷⁸ Ministry of Foreign Affairs, *Statement Delivered by the Delegation of Georgia at the 1 Working Session of the II OSRC* (Vienna: Permanent Mission of Georgia to the OSCE, 2010), 2.

⁵⁷⁹ Open Skies Consultative Commission, *Final Document of the Second Review Conference on the Implementation of the Treaty on Open Skies 9 June 2010* (Vienna: Organisation for Security and Cooperation in Europe, 2010), 1.

⁵⁸⁰ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, Second Open Skies Treaty Review Conference, 1-9 June 2010*, n.p.

investment that would be involved with digitisation, along with mission aircraft maintenance, upgrades and replacement. This was duly reflected in the Final Document of the Review Conference, calling for the modernisation of both sensors and aircraft.⁵⁸¹

It was in this respect that the Russian Federation provided one of the conference's highlights: a presentation on its new long-range observation mission platform, the Tupolev TU-214ON. Based upon the TU-214 airliner, the TU-214ON is the first purpose-built Open Skies mission aircraft, as well as the first to carry all Treaty-certified surveillance sensors. This state-of-the-art aircraft (subsequently confirmed to be a fleet of at least two) will have much greater range and capability than the TU-154M presently employed by the Russian Federation for long-range missions.⁵⁸² Based upon this fact alone, the Russian Federation will be able to fly direct to North America without en-route refuelling (a TU-154M requirement that has frequently provided "tip-offs" to observed States Parties in advance of the 72-hour notification requirement), thereby enhancing the intrusiveness of Russian Open Skies missions. A complete digital sensor-suite will also enable the aircraft to conduct observation flights at night. Although anticipated, the Russian presentation provided a clear indication of the significant investment it was willing to make in support of its Open Skies mission, placing it well ahead of other States Parties in this respect. This, of course, also reflects the value of the Open Skies regime in supporting Moscow's strategic security interests.⁵⁸³

⁵⁸¹ Open Skies Consultative Commission, *Final Document of the Second Review Conference on the Implementation of the Treaty on Open Skies* 9 June 2010, 2.

⁵⁸² Ministry of Foreign Affairs, *Working Session 2 Item 1 Briefing on TU-214* (Vienna: Permanent Delegation of the Russian Federation to the OSCE, 2010), 3.

⁵⁸³ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, Second Open Skies Treaty Review Conference, 1-9 June 2010*, n.p.



Figure 5.4: Russian Tupolev TU-214ON mission aircraft⁵⁸⁴

During the conference's working group meetings, there was a general reaffirmation of the need to progress work related to specific sensor categories, along with the formal establishment of minimum technical standards for Open Skies airfields. It was also apparent that, while some States Parties remained less than enthusiastic about expanding the Treaty's mandate to include environmental monitoring and crisis response as extensions of the Open Skies concept, sufficient support existed for further consideration.⁵⁸⁵ From a national sovereignty perspective, some States Parties were openly uncomfortable with a recommendation put forth by the United States for a single, centralised OSCE-based repository of digital observation flight media, rather than being retained by individual observing States Parties. Nevertheless, this was also noted in the Final Document as an item for further consideration.⁵⁸⁶

⁵⁸⁴ Rostec, "The Russian Air Force will receive another Tu-214 Open Skies Plane," *Rostec News*, 20 February 2014 [journal on-line]; available from <http://rostec.ru/en/news/4226>; Internet; accessed 22 February 2015, n.p.

⁵⁸⁵ Open Skies Consultative Commission, *Final Document of the Second Review Conference on the Implementation of the Treaty on Open Skies 9 June 2010*, 3-4.

⁵⁸⁶ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Conference Notes, Second Open Skies Treaty Review Conference, 1-9 June 2010*, n.p.

The on-going matter of Cyprus' candidacy for accession to the Treaty presented a particularly delicate political challenge to the conference in that, while most States Parties wished to keep this on the OSCC agenda, Turkey flatly objected. This necessitated careful crafting of the language of the Final Statement to refer to Cyprus in vague terms, simply "noting one application for accession."⁵⁸⁷ This resulted in all but two States Parties (Turkey and Bosnia-Herzegovina) making statements specifically supporting Cyprus' accession. This was met with a strong retort by Turkey, asserting that its veto had effectively settled the matter and that as such, the Cyprus question was outside the "scope, mandate and purview" of the OSCC, as well as the conference.⁵⁸⁸

Despite the obvious rancour over these issues, not only was the Review Conference able to produce a final document, but one that conveyed a decidedly positive regard and optimistic outlook for the Treaty. It called for further cooperation in transparency, to seek expansion in membership, and to provide a model and assist other regions in adapting the Open Skies concept of aerial observation "to promote security and stability." It also signalled States Parties' strong commitment to the Treaty and the 2015 Open Skies Review Conference.⁵⁸⁹

The investment made by individual States Parties in their respective national Open Skies capabilities raises an interesting question pertaining to one of the fundamental precepts of the Treaty. That is, given that the regime was established to provide all States Parties the ability to conduct observation overflight mission on their own terms, do the variances in the respective national capabilities of specific platforms

⁵⁸⁷ Open Skies Consultative Commission, *Final Document of the Second Review Conference on the Implementation of the Treaty on Open Skies 9 June 2010*, 2.

⁵⁸⁸ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 157.

⁵⁸⁹ Open Skies Consultative Commission, *Final Document of the Second Review Conference on the Implementation of the Treaty on Open Skies 9 June 2010*, 3-4.

and sensors undermine this concept? Some would agree, as evidenced by an earlier German proposal to acquire a “common operating platform” to better enable States Parties with a more standardised, efficient and cost-effective mission aircraft.⁵⁹⁰ Touched upon briefly during the Second Review Conference, informal discussions on a common operating platform led to formal presentations made by Airbus Military and the former Alenia Aeronautica (now Alenia Aermacchi) to an OSCC Sharing Assets Meeting on 22 November 2010.⁵⁹¹

The presentations (on the CASA C-295 and Spartan C-27J aircraft respectively) clearly demonstrated that there exist viable options in moving to a common platform as means of providing lower costs and increased value, particularly if undertaken in conjunction with the transition to digital based observation technologies. Moreover, the aircraft briefed are already in production (a variant of the CASA C-295, the CASA C-235 currently serves as Turkey’s Open Skies platform) and are capable of replacing most legacy platforms in the Open Skies role, with the added advantage of having comparatively low life-cycle technical support costs. The inherent multi-role capability of these aircraft would also facilitate expanded mission roles, such as environmental monitoring. Perhaps most intriguing is the potential for a common platform to be acquired within a range of proprietary options; e.g., national ownership, a multinational pool, “power by the hour” leasing, or contract service through a private operator.⁵⁹²

While the idea of a small fleet of aircraft commonly owned and operated by OSCE States Parties appeared to have merit for a number of OSCC representatives, others

⁵⁹⁰ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Meeting Notes, Defense Threat Reduction Agency and Bundeswehr Verification Centre, Fort Belvoir, 22 May 2008* (Ottawa: DND Canada), n.p.

⁵⁹¹ Open Skies Consultative Commission, *OSCC.DEL/22/10/Rev.1 Open Skies Sharing Assets Meeting*, 22 November 2010 (Vienna: Organisation for Security and Cooperation).

⁵⁹² Airbus Military, *General Presentation to the Open Skies Consultative Commission. C295: Transitioning to a Digital Common Operating Platform* (Madrid: Airbus Military, 2010), 13, 22.

opined that it was simply too much of a leap to combine the digital technology transition with the acquisition of a new aircraft. Nevertheless, the idea will likely remain on the agenda of the OSCC Informal Working Group on Sharing Assets that was subsequently established in 2013.⁵⁹³

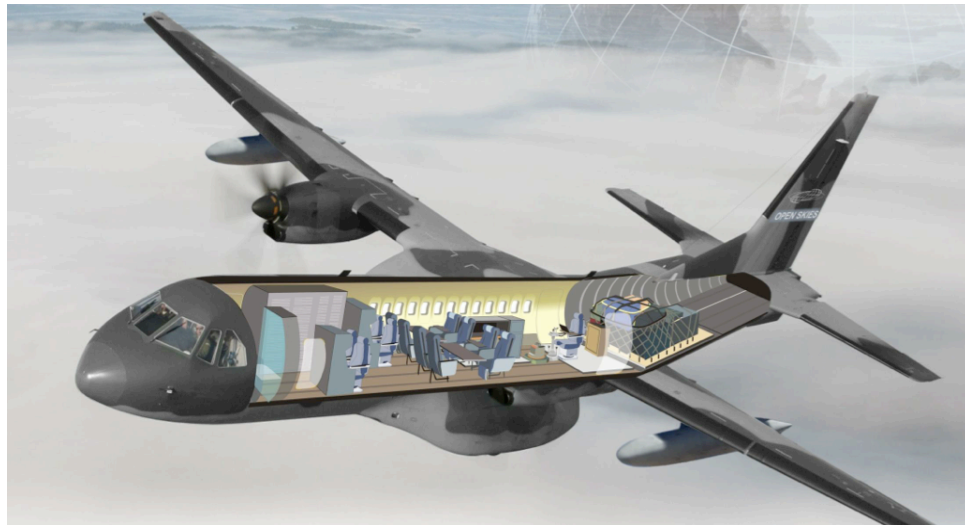


Figure 5.5: Airbus Military - CASA C-295 Open Skies concept aircraft⁵⁹⁴

New Challenges, Unresolved Issues

Since 2010, the Treaty has still managed to sustain a relatively high overall rate of implementation, which continues to indicate its value to individual national interests. Nevertheless, issues such as increasing operating costs and sustainment of specialised mission equipment and crews have taken their toll. Moreover, unresolved implementation issues have also translated into a reduction of flight mission activity in some instances. These missions are summarized as follows:

- 2011: 96 flight missions conducted;⁵⁹⁵

⁵⁹³ Open Skies Consultative Commission, *Decision No. 3/13 Establishing An Informal Working Group On Sharing Assets* (Vienna: Organisation for Security and Cooperation in Europe), 1-2.

⁵⁹⁴ Airbus Military, *General Presentation to the Open Skies Consultative Commission. C295: Transitioning to a Digital Common Operating Platform*, 17.

- 2012: 101 flight missions conducted;⁵⁹⁶
- 2013: 97 flight missions conducted;⁵⁹⁷
- 2014: 93 flight missions conducted;⁵⁹⁸ and
- 2015: 92 flight missions conducted.⁵⁹⁹

Following the Second Review Conference, proceedings within the OSCC became increasingly taken up by the continued acrimony between Greece and Turkey over the Cyprus question. Indeed, despite the OSCE's early intention to facilitate all OSCE members in acceding to the Treaty as a group, Turkey had made it clear that it would veto such an approach in order to specifically preclude Cyprus.⁶⁰⁰ Given Turkey's longstanding resistance, Greece consequently adopted the practice of routinely placing the Cyprus issue on the agenda of OSCC meetings as a "placeholder," with Turkey routinely blocking any move for accession. Following the Second Review Conference, however, things changed for the worse, with the Turkish Foreign minister instructing its OSCC delegation to block any and all business mentioning Cyprus, effective 1 January 2011.⁶⁰¹ Greece's practice of including Cyprus on the OSCC agenda resulted in Turkey blocking consensus on the agenda itself, effectively paralysing proceedings. By 24 October 2011, some specific interpretations by the OSCC Chair and other workarounds (such as informal and bilateral consultations)

⁵⁹⁵ Open Skies Consultative Commission, U.S. Delegation, *Open Skies Observation Flights Since EIF*, 16-19.

⁵⁹⁶ Open Skies Consultative Commission, U.S. Delegation, *Open Skies Treaty Observation Flights 2012* (Vienna: Organisation for Security and Cooperation in Europe, 2012), 1-3.

⁵⁹⁷ Open Skies Consultative Commission, U.S. Delegation, *Open Skies Treaty Observation Flights 2013* (Vienna: Organisation for Security and Cooperation in Europe, 2014), 1-3.

⁵⁹⁸ Open Skies Consultative Commission, U.S. Delegation, *Open Skies Treaty Observation Flights 2014* (Vienna: Organisation for Security and Cooperation in Europe, 2015), 1-3.

⁵⁹⁹ Department of State, *Open Skies Observation Flight Matrix as of 28 December 2015* (Washington: United States Department of State, 2015), n.p.

⁶⁰⁰ Peter Jones, *Open Skies. Transparency, Confidence-Building and the End of the Cold War*, 154.

⁶⁰¹ Ibid, 158.

enabled flight quota allocations to be undertaken for 2012 and 2013, along with an extension to earlier agreed rules for certification methodology.⁶⁰² Nevertheless, Turkey had escalated the matter as a major procedural challenge to OSCE rules and procedures, as well as the authority of the OSCE Chair itself. Accordingly, another significant impediment to Treaty implementation had developed. Hartwig Spitzer characterized the situation this way:

Here the implementation of a treaty which has so far been working well is being held hostage by diverging interests in a status conflict, which has its roots far beyond the treaty.... *Clearly, high-level ministerial intervention is needed to prevent a similar erosion process in the case of Open Skies.*⁶⁰³

The impasse was understandably downplayed at the OSCE's commemoration of the 20th anniversary of the signing of the Treaty and the 10th anniversary of its entry-into-force in Vienna on 27 March 2012. Hosted by the Treaty's Depositories, Canada and Hungary, the event was attended by all States Parties, observers and OSCE Partners for Cooperation. The commemoration provided another opportunity to reflect upon the achievements of the Treaty, which was openly described as one of the most important CSBM and arms control regimes of the modern era.⁶⁰⁴

In July 2013, following a series of concerted interventions by the United States in Ankara and Athens, further facilitated by the OSCE's Hungarian Chair, the agenda crisis was finally assuaged. While Turkey's opposition remained unchanged on

⁶⁰² Hartwig Spitzer, "Open Skies in turbulence, a well functioning treaty is endangered by outside developments," *Security and Human Rights* Volume 22, Issue 4, 2011: 108.

⁶⁰³ Hartwig Spitzer, "Open Skies in turbulence, a well functioning treaty is endangered by outside developments:" 108.

⁶⁰⁴ Organisation for Security and Cooperation in Europe, "Event held to commemorate 20th Anniversary of the signing of the Open Skies Treaty," *Newsroom*, 30 March 2012 [journal on-line]; available from <http://www.osce.org/oscc/89358>; Internet; accessed 18 February 2015.

Cyprus' membership, the status and treatment of its application was sufficiently adjusted to allow Ankara to lift its "blockade" of OSCE proceedings.⁶⁰⁵ This development finally enabled the OSCE to "turn a corner," just in time to commemorate yet another milestone: the 1000th Open Skies flight mission, which was conducted by Italy over the Russian Federation on 26 August 2013.⁶⁰⁶

In noting the causes and effects of the Greek-Turkish dispute, Wolfgang Zellner observed, "the functioning of another arms control treaty is endangered by disputes on unresolved sub-regional conflicts, this time between two NATO member states."⁶⁰⁷ It is evident that, given the very nature of the OSCE rules and procedures, a situation such as this one constitutes a significant impairment. It also indicates how far States Parties and the OSCE itself are willing to go in order to address it. For example, actions taken by the Chair to enable proceedings to continue to the extent possible, despite protest by Turkey, illustrate that there are some informal, discretionary approaches that can be undertaken as initial means of mitigation when consensus is blocked. As previously discussed, the effectiveness of such approaches varies considerably as a function of the chair's ability to shape and influence proceedings. Otherwise, there have existed circumstances where the limits of the OSCE's consensus-based governance structure warranted additional, formal measures to be established. Accordingly, while the Organisation's *Rules of Procedure*, which require decisions to be based upon "the absence of any objection expressed by a participating State to the adoption of the

⁶⁰⁵ Hartwig Spitzer, "Open Skies: cooperative transparency agreement works in stormy times," *Verification, Implementation and Compliance* 27 October 2014 [journal on-line]; available from <http://www.armscontrolverification.org/?view=classic>; Internet; accessed 18 February 2015, n.p.

⁶⁰⁶ Open Skies Consultative Commission, U.S. Delegation, *Open Skies Treaty Observation Flights 2013*, 2.

⁶⁰⁷ Wolfgang Zellner, "Conventional Arms Control in Europe: Is there a Last Chance?" *Arms Control Today* (March 2012) [journal-on-line]; available from www.armscontrol.org/act/2012_03/Conventional_Arms_Control_in_Europe_Is_There_a_Last_Chance#4 March 2012; Internet; accessed 18 March 2015, n.p.

decision in question,”⁶⁰⁸ the 1992 Prague Document on Further Development of CSCE Institutions and Structures instituted “consensus minus one,” whereby “appropriate action may be taken in cases of clear, gross and uncorrected violations of relevant CSCE commitments.”⁶⁰⁹ “Consensus minus one” thereby established the precedent of an exception to consensus, which was applied in Yugoslavia’s suspension from the OSCE that same year. Shortly thereafter, the CSCE introduced the possibility of a decision being rendered under “consensus minus two,” pertaining to the peaceful settlement of disputes. The 1992 *Convention on Conciliation and Arbitration* subsequently enabled the CSCE and OSCE to “direct any two participating States to seek conciliation to assist them in resolving a dispute that they have not been able to settle within a reasonable period of time.”⁶¹⁰ In this instance, however, it again required the specific engagement of individual States Parties themselves to bring the situation under control.

The references made to these mechanisms is not to suggest that a “consensus minus” approach would necessarily be required in this instance, but rather to point out that the CSCE and OSCE had previously sought means through which to address major transgressions and impasses. Although consensus-based decisions are, by design, the preferred approach, in situations where such consensus has been blocked and the implementation of a binding mechanism has become significantly impaired, the

⁶⁰⁸ Organisation for Security and Cooperation in Europe, *Rules and Procedures of the Organisation for Security and Cooperation in Europe* (Vienna: Organisation for Security and Cooperation in Europe, 2006), 1.

⁶⁰⁹ Conference on Security and Cooperation in Europe, *Prague Document on Further Development of CSCE Institutions and Structures* (Prague: Conference on Security and Cooperation, 1992), 16.

⁶¹⁰ Conference on Security and Cooperation in Europe, *Third Meeting of the Council. Summary of Conclusions. Decision on Peaceful Settlement of Disputes* (Stockholm: Conference on Security and Cooperation in Europe), 13.

application of alternative measures (or lack thereof) becomes fundamentally a question of political will, as will be further discussed.

During the same period as the OSCC agenda impasse, other implementation issues continued to simmer. In April 2012, given the unresolved dispute over its territories of South Ossetia and Abkhazia, Georgia announced the cessation of Open Skies Treaty implementation with respect to the Russian Federation. Appearing to take a page from the 2011 counter-suspension of CFE Treaty obligations vis-à-vis Russia by several States Parties to that regime, the Georgian Ministry of Foreign Affairs explained its actions as follows:

This move by the Georgian side responds to Russia's cessation of implementation of certain Treaty obligations, which began in 2010 and subsequent attempts of Russia to exploit Open Skies Treaty for the purpose of legitimizing the so-called independence of Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia. In such circumstances Georgia has made an appropriate decision to cease performing its obligations vis-à-vis the Russian Federation under the Open Skies Treaty. This decision in specific terms means that Georgia will not allow any observation flights with the participation of the Russian Federation over the territory of Georgia and Georgia will not conduct observation flights over the territory of the Russian Federation. Georgia will resume implementation of the Treaty obligations vis-à-vis the Russian Federation upon the latter's return to full compliance with the Treaty. Georgia will, of course, continue to fulfill its Treaty obligations with respect to all other States parties.⁶¹¹

⁶¹¹ Ministry of Foreign Affairs, *Statement of the Ministry of Foreign Affairs of Georgia on a decision to cease performing its obligations vis-a-vis the Russian Federation under the Open Skies Treaty* (Tbilisi: Ministry of Foreign Affairs of Georgia, 2012), n.p.

In this particular case, the degradation of not only the Open Skies Treaty, but also conventional arms control and CSBM regimes in general is further demonstrated. While no party should be able to unilaterally impose a restriction such as this upon the implementation of a binding regime unless specifically provided for, justification can be readily derived from various interpretations of conventional and customary international law. Indeed, this was the case in Moscow's CFE Treaty suspension and consequent counter-suspension by other States Parties. This renders the Georgian suspension of its Open Skies obligations vis-à-vis Russia all the more difficult to resolve, given the CFE Treaty precedent.

The Georgian suspension again highlights the risk of insufficient "provocability" to regime contraventions. Moreover, as a further indication of institutional prevarication, an unofficial OSCE media-briefing document noted: "If a State refuses to comply with the [observation flight] request there is no system of sanctions although the State can expect to be criticized by other States."⁶¹² While technically correct in the strictest terms of the Treaty's text, this statement nevertheless conveys a sense of detachment, if not outright apathy, given the role of the OSCC as the regime's implementing body and the OSCE as its governing institution.

Continued trivial or even arcane technical complications have also served to impede the implementation of the Treaty. In March 2013, a new Canadian C-130 "J" model aircraft was to be used as an Open Skies platform for the first time in support of an overflight mission of the Russian Federation. The "J" model Hercules aircraft had been previously certified for Open Skies by Italy on behalf of all Pod Group countries in

⁶¹² Organisation for Security and Cooperation in Europe, *Open Skies Treaty: A briefing paper for media and journalists, 18 March 2014* (Vienna: Organisation for Security and Cooperation in Europe, 2014), 2.

2003⁶¹³ and the Canadian “J” model aircraft was identified as such in its notification to the Russian Federation. Following the acceptance message from the Russian Federation, the aircraft proceeded to Melsbroek Airbase, Belgium for the installation of the SAMSON Pod mission system. Following the aircraft’s arrival at Melsbroek, Moscow notified Canada that the mission was now refused, due to the Canadian “J” model Hercules having not been certified. Although Canada argued that as a Pod Group C-130J, the aircraft indeed met all of the requirements of certification and would be available for ground inspection upon arrival at the Russian point of entry, Russian authorities rejected this response and the mission was necessarily cancelled.⁶¹⁴ Following extensive debate over the validity of the Canadian certification per OSCE Decision 15/04, which prescribes the requirements for new models of C-130 aircraft,⁶¹⁵ the matter was finally resolved through a compromise ground inspection (vice full certification) of a C-130J aircraft at Canadian Forces Base Trenton, Ontario in May of that year. Attended by Russian and a handful of other representatives, the inspection was deemed unnecessary by most other States Parties for reasons that were largely self-evident. As such, Moscow’s pedantic interpretation, however erroneous, was rendered because it was deemed advantageous to be so, if only to “stick it” to a NATO State Party.⁶¹⁶

Despite various efforts to resolve earlier instances of non-compliance and technical non-conformity, similar implementation infractions continued to occur. In late September 2013, the Russia/Belarus Group of States Parties refused to accept a

⁶¹³ Open Skies Consultative Commission, *Decision No. 13/03 Certification of Italian Observation Aircraft C-130 J* (Vienna: Organisation for Security and Cooperation in Europe, 2003), 306-307.

⁶¹⁴ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

⁶¹⁵ Open Skies Consultative Commission, *Decision No. 15/04 Certification of New Models of C-130 Aircraft* (Vienna: Organisation for Security and Cooperation in Europe, 2004), 356-358.

⁶¹⁶ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

Norwegian observation flight mission over specific areas of western Russia and Belarus, where the joint and combined Exercise ZAPAD (i.e., “WEST”) 2013 was taking place.⁶¹⁷ The mission included flight through UMD187 -- a designated “danger area” typically reserved from the surface to 24,000 feet for the firing of missiles and other types of ordnance.⁶¹⁸ Although Section II of Article VI of the Treaty specifically provides a States Party the right to overfly the entire territory of another State Party “including areas designated by the observed Party as hazardous airspace,”⁶¹⁹ it is apparent that Moscow and Minsk simply did not want the exercise to be observed. Indeed, similar actions to obstruct access to the exercise by participating States to the Vienna Document were also taken. While Norway cancelled the mission in protest and subsequently raised the issue within the OSCE, the explanation provided by Belarus was familiarly specious; i.e., that the restrictions were related to flight safety associated with live-firing activities.⁶²⁰ A subsequent statement issued by the Russian Foreign Ministry stated:

It is also obvious that restricted areas over the area of military exercise involving battle firing are necessary. Russia (and Belarus) ensured security of a U.S. or Norwegian open skies aircraft that was intended to be used for overflight of this area. At the same time, Russia and Belarus issued notifications about restricted areas well in advance, informed the observing party and suggested alternative routes and flight height, thus implementing the OST [Open Skies Treaty] requirements. It should be noted that some U.S. allies also set restricted areas, in particular over positions of their Patriot air defense missile systems. Yet the

⁶¹⁷ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*. July 2014, 34.

⁶¹⁸ Federal Aviation Administration, *PilotWeb* [aeronautical information on-line]; available from <https://pilotweb.nas.faa.gov/PilotWeb/radiusSearchAction.do?formatType=ICAO&geoIcaoLocId=UMB&geoIcaoRadius=5&openItems=&actionType=radiusSearch>; Internet; accessed 18 April 2015, n.p.

⁶¹⁹ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 14-15.

⁶²⁰ Department of State, *Adherence To and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*. July 2014, 36.

[United States Department of State compliance] report does not mention this. It is regrettable that in this case we see a "hidden agenda" in the US schemes.⁶²¹

Irrespective of disagreement, the immediate aim of denying overflight was once again achieved with little, if any, real consequence. Norway's rights were precluded in a perfunctory fashion that, similar to other "national procedures," generally flouted the Treaty's legally-binding obligations. The OSCC's lack of response was ostensibly borne out of the characteristic preference to await consensus and otherwise preserve goodwill. Such a lack of response, however, only served to tacitly accept States Parties' discretion in repudiating the very purpose and design of the Treaty; that is, the right of unimpeded overflight. A 2014 State Department report, noting that the United States "...will press Belarus and work with other States Parties through diplomatic channels, including the OSCC, to urge the Russia/Belarus Group not to impose airspace restrictions during future military activities," again serves to underscore serious deficiencies in the oversight and management of the Treaty, along with its significant degradation as a CSBM mechanism.⁶²²

Since 2011, on-going closures of Russian Open Skies airfields during holiday periods has continued to impair planned observation flight missions by some States Parties. Despite the aforementioned OSCC convention to take holidays into account as a planning consideration only, Moscow has simply reinforced its own rule that it will not receive and support missions during these periods, in contravention of Article VI provisions. Although various efforts have been made to accommodate Russian holidays

⁶²¹ Ministry of Foreign Affairs, *Comments by the Russian Ministry of Foreign Affairs on the report of the U.S. Department of State on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments* 1 August 2014 (Moscow: Ministry of Foreign Affairs of the Russian Federation, 2014), n.p.

⁶²² Ibid, 36-37.

in planning missions, the more recent extensions of these holiday periods has had a particularly adverse impact on States Parties' ability to exercise their Treaty rights. Likewise, continued disregard by Russian authorities in according air traffic control priority to time-sensitive Open Skies flight missions over regular air traffic has resulted in delays and cancellations of not only flight segments, but observation missions altogether.⁶²³

As repeatedly noted, despite objections being raised within OSCC meetings, a clear lack of any meaningful outcome has necessitated continued bilateral efforts to mitigate Treaty infringements. As might be expected, the United States has taken the lead on such engagement. Indeed, in late-December 2013, senior United States officials had engaged their Russian counterparts via formal correspondence to the Chief of the Foreign Military Cooperation Directorate of the Russian Ministry of Defence, while also holding separate meetings in Vienna with the Head of the Russian National Nuclear Risk Reduction Centre.⁶²⁴ While these bilateral efforts have continued, they have proven themselves exceedingly difficult, as evidenced in a Russian Foreign Ministry statement pertaining to a United States Department of State 2014 compliance report on Moscow's various infractions of the Treaty:

Many U.S. "quibbles" are of purely technical nature, and it would be quite difficult for the general public to understand what they are about if we started discussing them one by one.... One of their main claims is that Russia allegedly restricts the use of air space for OST [Open Skies Treaty] purposes.... The first thing to be noted is that the Treaty envisages that observation flights shall be conducted with due regard for national (in this case Russian, as well as, with respect to Zapad-2013 exercises, Belorussian) rules of use of air space.

⁶²³ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

⁶²⁴ Ibid, 38-40.

Restrictions on flights of aircraft over Moscow and Chechnya restricted areas were introduced only for security reasons. Unlike the Americans, we cannot disregard this.... When we introduced restrictions on OST flights near the border of Abkhazia and South Ossetia, we strictly followed the provisions of the Treaty prohibiting observation flights closer than 10 kilometers off the border of a non-State Party. Abkhazia and South Ossetia are such states. Those who still consider them to be Georgian regions are six years behind the times. ...Another issue related to us is that we close Russian air fields during national holidays. What can we say, given that such practices are widely used by other OST parties without making the United States allergic?⁶²⁵

From an implementation oversight perspective, opposition by any State Party to any action that inhibits or constrains its rights under the Treaty is certainly appropriate; however, leaving the matter to individual States Parties to resolve separately as a matter of routine clearly denotes critical weaknesses in Treaty governance and management.

Digitisation and Modernisation

In addition to attendant oversight and implementation challenges, the Treaty has also undergone various difficulties with its on-going transition to digital technology. In 2005, OSCE Decision 12/05 established an agreed digital data exchange format, thereby standardising the transfer of digital data recorded during observation flights, as well as the conversion of analogue data to digital following observation flights.⁶²⁶ This set the stage for the process of incorporating modern digital sensors into certified mission

⁶²⁵ Ministry of Foreign Affairs, *Comments by the Russian Ministry of Foreign Affairs on the report of the U.S. Department of State on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*, n.p.

⁶²⁶ Open Skies Consultative Commission, *Decision No. 12/05 Standardization of Logical Formats for the Exchange of Digital Data Among States Parties* (Vienna: Organisation for Security and Cooperation in Europe, 2005), 1.

systems, employing open standard, internationally approved and technically viable camera and other sensor configurations. In order to achieve this, commercial-off-the-shelf products were deemed suitable, as they comprised the most cost-effective, transparent and readily available/supportable equipment for Open Skies use, including the specified resolutions and output formats.⁶²⁷

By 2010, the OSCC had decided that commercial-off-the-shelf available digital camera systems, employing up to four colour channels (blue, green, red, and near-infrared), would indeed be suitable for the purposes of the Treaty.⁶²⁸ This decision had been previously held up largely by Russian resistance over concerns about the multispectral capabilities of such systems, which employ specific frequencies across the electromagnetic spectrum, thereby enabling the acquisition of additional information such as camouflage, vegetation coverage, water depth and chemicals.⁶²⁹ Nevertheless, once the decision was made, Moscow readily adapted its already ambitious Open Skies modernisation programme, quickly incorporating this type of digital system into its planned mission aircraft sensor suites. For the new TU-214ON, the integration of these new sensors (multi-channel vertical and oblique electro-optical cameras; infrared and synthetic aperture radar systems) has been facilitated by the aircraft's open architecture.⁶³⁰ Nevertheless, a number of technical challenges remain in this ambitious project, with certification not expected before 2017.⁶³¹

⁶²⁷ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Updating the Open Skies Treaty. Canadian Perspective* (Ottawa: DND Canada, 2007), 7.

⁶²⁸ Open Skies Consultative Commission, *Decision No. 9/10 Digital Imagery Processing* (Vienna: Organisation for Security and Cooperation in Europe, 2010), 1.

⁶²⁹ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

⁶³⁰ Hartwig Spitzer, "Open Skies: cooperative transparency agreement works in stormy times," n.p.

⁶³¹ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

In addition to the standardisation of formats for the exchange of digital data, the OSCC also had to develop specific procedures to safeguard the custody and processing of digital imagery, given the comparative ease with which such imagery can be altered. Accordingly, technical and procedural measures were established to ensure that unprocessed mission imagery and associated flight data are recorded onto approved removable storage systems, under the direct oversight of both observing and observed States Parties. Similar custodial safeguards are then employed in the transfer and processing of annotated mission media into the approved Open Skies format, including duplicates. Removable storage devices used in the transfer process are then erased under similar scrutiny to ensure that there is no possibility of further extraction of digital data.⁶³²

These transfer and exchange procedures would prove particularly problematic in the first Open Skies platform to undergo certification: the Russian Antonov AN-30 medium-range turbo-prop aircraft. The AN-30 had been quickly retrofitted with a new digital electro-optical camera system -- the OSDCAM4060, built by PO KSI, a private research company based in Moscow.⁶³³ Immediately following the requisite adoption of corresponding OSCC Decisions on 16 September 2013,⁶³⁴ a certification event, open to all States Parties, was conducted From 21 to 27 September 2013 at Kubinka Airbase near Moscow -- one of the Russian Open Skies points of entry. For the most part, certification procedures (including ground inspection of the aircraft and mission systems, camera performance measurements, validation of digital processing, transfer, duplication and erasure) were carried out uneventfully. The United States, however,

⁶³² Ibid, n.p.

⁶³³ PO KSI Company, *Electro-Optical Observation Station OSDCAM4060*, Product brochure (Moscow: PO KSI Company, no date).

⁶³⁴ Department of State. *Treaty on Open Skies: OSCC Decisions* [information on-line]; available from <http://www.state.gov/t/avc/cca/os/c26158.htm>; Internet; accessed 18 April 2015, n.p.

was concerned about the non-removable storage units integral to the OSDCAM 4060's on-board computer and ground processing station; specifically, the possibility of concealed data acquisition. When the United States representatives requested to use their own equipment to measure various camera and processing operations with respect to these fixed storage units, Russian officials refused on the grounds that no provisions existed to allow this.⁶³⁵ Accordingly, the United States refused to sign the certification document, resulting in the process being effectively suspended. As might be imagined, this created considerable upheaval within the Open Skies community, particularly given that, from a technical perspective, the processing storage units were not a security concern to any other States Party. Indeed, increasingly frustrated as the stalemate continued, Moscow began to seek bilateral arrangements with other States Parties to use the OSDCAM4060-equipped AN-30 for Open Skies missions in their respective countries.⁶³⁶

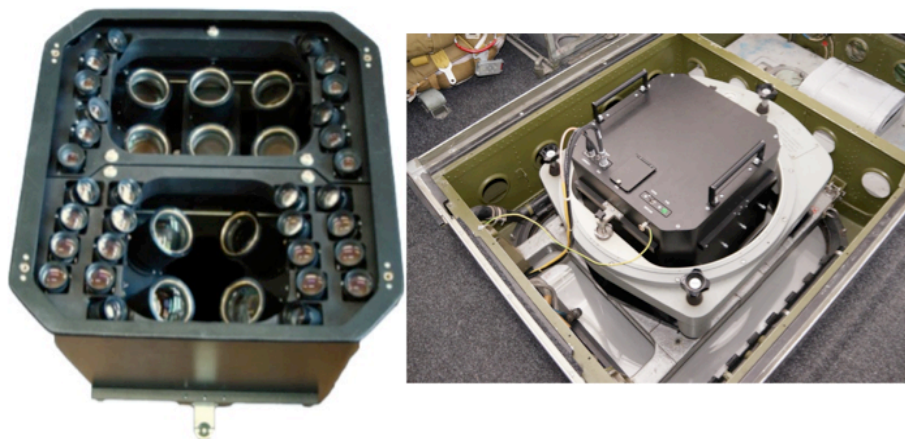


Figure 5.6: Russian OSDCAM4060 Electro-Optical Camera (L); Installed on AN-30B mission aircraft (R).⁶³⁷

Several weeks later, the United States offered a technical compromise to enable certification; namely, that Russia permit other States Parties the option of purchasing

⁶³⁵ Hartwig Spitzer, "Open Skies: cooperative transparency agreement works in stormy times," n.p.

⁶³⁶ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

⁶³⁷ PO KSI Company, *Electro-Optical Observation Station OSDCAM4060*, Product brochure (Moscow: PO KSI Company, no date).

the OSDCAM4060 non-removable storage units following a given observation flight mission, or that it utilise removable storage units only. These conditions were flatly rejected by Moscow on the grounds that removal of fixed components would entail system disassembly, which was clearly unfeasible and also had warranty implications. Furthermore, conversion to removable storage components would entail the complete re-design of the system.⁶³⁸ The proposal was also not particularly well received by most other States Parties as a matter of principle, given that it represented a departure from what had been originally agreed within the OSCC. This resulted in the continuation of the stalemate.⁶³⁹

It is evident that within the United States defence and intelligence communities, there have been clear concerns over the possibility of digital data exploitation by Russia in its OSDCAM4060 design. While such concern is understandable, the specific rationale for “holding out” on certification might have been averted with greater specificity accorded to the technical requirements established for digital mission systems in the first place. In fairness, the transition has been evolutionary in nature and difficult to foresee in terms of any and all sub-system designs. Nevertheless, under the strict interpretation of the Treaty and associated OSCC decisions, there was little the United States could offer to justify its position.

Internal disagreements that had pinned United States defence and intelligence communities against the State Department over the digital certification issue quickly degraded into open disaccord between Congressional Republicans and the Obama Administration that endured for several months. This included debate concerning the

⁶³⁸ Hartwig Spitzer, “Open Skies: cooperative transparency agreement works in stormy times,” n.p.

⁶³⁹ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

Defence Authorization Bill for 2015, which included added provisions to withhold funding required to enable United States' certification of new Russian aircraft and sensors unless guarantees could be provided that they "will not enhance the capability or potential of the Russian Federation to gather intelligence that poses an unacceptable risk to the national security of the United States."⁶⁴⁰ The language of the ensuing *National Defense Authorization Act for Fiscal Year 2015*, while softened slightly, still called for specific requirements to be met in assessing the risk to the national security of the United States posed by new Russian observation aircraft and digital system capabilities.⁶⁴¹ On-going criticism by senior lawmakers has also included the rationale that certification would only serve to further enable Russian airborne reconnaissance capabilities, despite its record of non-compliance with other treaty obligations. This has translated into certification being accorded only on the condition of Russia's withdrawal from Ukraine and the cessation of its violation of the 1987 Intermediate-Range Nuclear Forces Treaty.⁶⁴² In response, the United States Office of Management and Budget has argued that impeding the means through which to certify would actually "prevent the United States from reviewing, examining, or raising concerns regarding a proposed Russian aircraft or sensor."⁶⁴³

Notwithstanding these domestic diversions, as the only certification "holdout," Washington needed to make a decision on either remaining opposed (bringing both the United States as a State Party and the future of the Treaty itself into question), or

⁶⁴⁰ Bill Gertz, "Collision Course," *Washington Free Beacon*, 3 June 2014 [journal-on-line]; available from <http://freebeacon.com/national-security/collision-course/>; Internet; accessed 18 February 2015, n.p.

⁶⁴¹ Congress of the United States, "Section 1242. Notification and Assessment of Proposal to Modify or Introduce New Aircraft or Sensors for Flight by the Russian Federation Under Open Skies Treaty," *National Defense Authorization Act for Fiscal Year 2015* (Washington: Congressional Printing Office, 2014), 683-694.

⁶⁴² Bill Gertz, "Collision Course," *Washington Free Beacon*, 3 June 2014, n.p.

⁶⁴³ Ibid, n.p.

“signing up” to the certification. The decision was somewhat tempered by the fact that the AN-30B, while technically capable of operating in the United States, was intended first and foremost as a European mission platform and would almost certainly remain so. On 21 May 2014, following National Security Council consultations, the United States formally approved the certification of the OSD CAM4060-equipped AN-30B – a full eight months after the certification event at Kubinka Airbase.⁶⁴⁴ The official announcement stated: “After careful consideration the United States has decided to certify the electro-optical sensor for the Russian Federation’s AN-30 Open Skies Treaty aircraft, which is used in Open Skies flights over Europe.”⁶⁴⁵ The United States certification was also made with the caveat that certification did not establish a precedent for that of any future sensor/aircraft combination. Nevertheless, the White House was careful to further explain the rationale for the decision, particularly in light of various Russian violations of the Treaty. This rationale was, ultimately, to enable the transition to digital technology and preserve the Treaty: “All states parties agree that the transition from film cameras to digital sensors is required for the long-term viability of the treaty.”⁶⁴⁶ From 7 to 12 July 2014, the first Open Skies observation flight mission employing a digital sensor was finally flown by a Russian AN-30B over Poland.⁶⁴⁷ The extended delay was not left without comment by Moscow:

In late 2013 - early 2014, it took Washington eight months (instead of two weeks as required by the Treaty) to sign the certification report of Russia's An-30B observation aircraft equipped with digital sensors, which challenged the "digital future" of the OST. In this context, the unreliability of U.S. observation aircrafts, low skills of U.S. on-board interpreters and their poor coordination with the crews may seem insignificant, but all this still leads to flight delays,

⁶⁴⁴ Hartwig Spitzer, “Open Skies: cooperative transparency agreement works in stormy times,” n.p.

⁶⁴⁵ Bill Gertz, “Collision Course,” *Washington Free Beacon*, 3 June 2014, n.p.

⁶⁴⁶ Ibid, n.p.

⁶⁴⁷ Hartwig Spitzer, “Open Skies: cooperative transparency agreement works in stormy times,” n.p.

changes in arrival time, and neglect of instructions by air traffic control bodies, etc. It does not just inflict considerable costs on Russia, but can also adversely affect safety and security of the flights.⁶⁴⁸

The OSCDCAM4060, or a derivation thereof, is also being fitted on Russia's legacy long-range observation aircraft, the TU-154M, with certification expected in 2016. Although new certification criteria will be utilised, similar issues can be expected to recur, this time concerning an aircraft used for long-range observation overflights of the United States and Canada.⁶⁴⁹

The first digital certification under the Treaty exemplifies not only the challenges of establishing highly intricate, common technical standards within a multilateral CSBM regime, but one fraught with various degrees of circumspection. Accordingly, despite the concerted efforts of the OSCC's Informal Working Group on Sensors in establishing digital mission system specifications, complications were to be expected. Still, the Russian OSDCAM4060 included other design aspects that arguably should have been better addressed during earlier stages of development. While the certification impasse would appear to justify this comment, working relationships between Russia and other OSCC members may well have precluded the necessary collaboration.

The ensuing tumult in Washington highlights a number of issues. This includes the perception held by some lawmakers of the justification of unilateral action taken in

⁶⁴⁸ Ministry of Foreign Affairs, *Comments by the Russian Ministry of Foreign Affairs on the report of the U.S. Department of State on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments* (Moscow: Ministry of Foreign Affairs of the Russian Federation, 2014), n.p.

⁶⁴⁹ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

response to the Russian Federation's conduct not just with respect to the Treaty, but elsewhere. It also raises questions concerning the awareness and understanding of Open Skies capabilities in general. With the Russian Federation maintaining a clear lead in both mission system and aircraft modernisation, it is apparent that the regime affords it a highly important strategic reconnaissance capability. This at least partially explains Washington's resistance generally, along with own lack of progress in digital modernisation. That is, bias favouring space-based reconnaissance superiority over airborne systems, notwithstanding the fundamental capability differences between the two.

In January 2014, the United States Defense Science Board report recommended that the Department of Defense abandon digital upgrades of its Open Skies OC-135B aircraft fleet. This recommendation was based upon the "easy accessibility" of satellite imagery, further noting the extant Treaty requirement to employ analogue systems and wet film rather than digital optics. This evidently misinformed and technically situated report therefore concluded that the expense involved in upgrading the OC-135B was unnecessary and wasteful.⁶⁵⁰ Nevertheless, the project to upgrade the OC-135B fleet remains "on the books," as evidenced by a March 2014 United States Department of Defense Budget Item: *PE 0305145F/Arms Control Implementation* which, in accordance with *Presidential Policy Directive 15*, seeks to "upgrade the sensors on the current aircraft by replacing film-based cameras with available electro-optical sensors," at an estimated cost of \$US24.652 million and an initial operational capability in

⁶⁵⁰ Nuclear Threat Initiative, "Treaty on Open Skies." *Treaties and Regimes* [journal-on-line]; available from <http://www.nti.org/treaties-and-regimes/treaty-on-open-skies/>; Internet; accessed 20 February 2015.

2017.⁶⁵¹ Despite this, some members of the United States Open Skies community remain somewhat sceptical that this replacement programme will remain on track.⁶⁵²

The C-130 Pod Group has also undergone a significant transformation. Following Norway's departure in 2011 to pursue its own national mission platform and system, nine nations (Belgium, Canada, France, Greece, Italy, Luxembourg, the Netherlands, Portugal and Spain) had since comprised the Group. In December 2013, the Pod Group's "Ministerial Arrangement" was terminated, following a decision by the Government of Belgium to end its support of the SAMSON Pod mission system at Melsbroek Airbase, Brussels.⁶⁵³ The Belgian decision had been preceded by Group-wide cost- and policy-related determinations that had translated into an overall reduced imperative to conduct observation overflights. This included Belgium, which had publically stated that it no longer intended to conduct observation flights under the Treaty. However, another major factor in terminating its host nation arrangements involved the planned phase-out of C-130-related infrastructure and support at Melsbroek in order to accommodate new A400 transport aircraft.⁶⁵⁴

Subsequent to Belgium's announcement, the remaining Pod Group nations -- less Canada, France and Italy -- similarly indicated their intent to discontinue their use of the SAMSON Pod system, ostensibly to pursue other capability options. These developments had the effect of expediting efforts already underway by Canada, France

⁶⁵¹ Department of Defense, *Exhibit R-2, RDT&E Budget Item Justification: PB 2015 Air Force, March 2014* (Washington: Department of Defense, 2014), 6.

⁶⁵² Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

⁶⁵³ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Briefing Note for Director of Staff Strategic Joint Staff, Belgian Withdrawal of Host Nation Support to C-130 Open Skies Pod System (COPS) – Treaty on Open Skies* (Ottawa: DND Canada, 2013), 1.

⁶⁵⁴ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Briefing Note for Director of Staff Strategic Joint Staff, Belgian Withdrawal of Host Nation Support to C-130 Open Skies Pod System (COPS) – Treaty on Open Skies*, 1-2.

and Italy in developing a digital successor to the SAMSON Pod. This included the establishment of the Multinational Open Skies Digital Imaging System Focus Group (subsequently changed to the Open Skies Imaging System (OSIS) Focus Group), which is currently developing a successor C-130 mission system, incorporating digital sensors and processors compatible with OSCC specifications.⁶⁵⁵



Figure 5.7: C-130 SAMSON Pod Mission System⁶⁵⁶

The efforts of the OSIS Focus Group continue, with the successor mission system's initial operational capability expected sometime in 2019. To enable a smooth transition, Canada has assumed ownership of the legacy SAMSON Pod system and for coordinating its transfer to interim storage and basing facilities at Orléans Airbase, in France. There, the now largely unsupported legacy system is hoped to remain mission capable "as is," thereby enabling observation flight mission operations by Canada, France and other interested former Pod Group members throughout the transition to the

⁶⁵⁵ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

⁶⁵⁶ Department of National Defence, Strategic Joint Staff Arms Control Verification photos.

successor system. Italy had initially agreed to eventually serve as Host Nation, with the main support base to be located at the 46^a Brigata Aerea, at Pisa. This, however, remains to be confirmed, given questions regarding Italy's continued involvement, along with other factors concerning the permanent European basing of the successor system.⁶⁵⁷ Securing funding for this project has also been a challenge, given the persistent perception that Open Skies capabilities are “non-essential.” Accordingly, full funding is yet to be secured. With the cost of the digital transition expected to be in the order of \$US20 million, participation in OSIS remains open to all former Pod Group and other NATO States Parties to the Treaty. While this may well occur once the “heavy lifting” is completed by Canada and France, it remains to be seen how the initial costs in digital conversion might suitably apportioned afterwards.⁶⁵⁸

It is evident that the demise of the C-130 Pod Group was predicated by high operations and maintenance costs, combined with the decreased priority subsequently accorded to conducting “active” observation overflight missions by most members, based upon a perceived lack of requirement. The anticipated additional expense and effort of transitioning to digital technology provided further disincentive. Although this reduced level of active engagement does not necessarily translate into an increased probability of future withdrawals from the Treaty itself, it does indicate a growing disparity in States Parties' wherewithal and sense of imperative. Given the original concept envisioned by the Treaty in providing a “level playing field” upon which to conduct discretionary observation flights, it would appear that efforts to sustain the regime through modernisation might, at least initially, prove contrary to this precept.

⁶⁵⁷ Department of National Defence, Strategic Joint Staff Arms Control Verification, *Briefing Note for J3 Strategic Joint Staff. Relocation of C-130 Open Skies Pod System (COPS)* (Ottawa: DND Canada, 2013), 1.

⁶⁵⁸ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

Certainly, the lack of other options to assist States Parties lacking the necessary resources to acquire a cost-effective capability -- such as those envisioned under a common operating platform -- may actually exacerbate this problem.

The Ukraine Crisis

The utility of the Open Skies Treaty has been well demonstrated in Ukraine's internal conflict with Russian-backed separatists in 2014 and 2015. In response to this crisis, unique provisions have been employed in the conduct of observation overflights. That is, in addition to the general provisions for the conduct of observation flights under Article VI of the Treaty, Annex L further enables the OSCC to consider requests from the OSCE and other international organisations "to facilitate the organization and conduct of extraordinary observation flights over the territory of a State Party with its consent." It also permits observation flights conducted under a "bilateral and voluntary basis," following the procedures regarding the conduct of observation flights.⁶⁵⁹ Accordingly, at the invitation of Ukraine, two observation flight missions (one by Sweden and one by the United States and Canada) were conducted over Ukraine in March 2014.⁶⁶⁰ Under the same Annex L provisions, Ukraine itself was, surprisingly, permitted by the Russian Federation to conduct an observation mission over the Russia's western border area that same month. Another flight by the United States over Ukraine in May 2014 included the survey of Ukraine's border with Russia, along with that of Moldova (including the breakaway region of Transdnistria). In May 2014, Moscow's denial of a second request by Ukraine to overfly Russia under Annex L

⁶⁵⁹ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 96.

⁶⁶⁰ Ariana Rowberry, "The Vienna Document, the Open Skies Treaty and the Ukrainian Crisis." *Up Front*. Brookings Institute [journal on-line]; available from <http://www.brookings.edu/blogs/up-front/posts/2014/04/10-vienna-document-open-skies-ukraine-crisis-rowberry>; Internet; accessed 7 February 2015, n.p.

provisions was indicative of both the worsening situation, along with the elementary deduction that such an overflight would likely be disadvantageous to Russian objectives.⁶⁶¹

Regular quota observation flights have also been employed to monitor the Ukrainian conflict. As noted by Hartwig Spitzer, some 22 quota flight missions were conducted over Russia (out of the year's total of 35) from the beginning of March to mid-August 2014. These flights initially focused upon areas in the southwest, adjacent to Ukraine.⁶⁶² Yet another refusal of a planned United States observation flight mission over Russia occurred in mid-April, with Russian officials basing their reason as "poor weather" which, under Treaty provisions, cannot be invoked by an observed State Party. That is, under Article VIII, the observed State Party can only "propose changes to the mission plan" on the grounds of weather as a flight safety criterion.⁶⁶³ According to American officials, the reason for this pretence was to limit observation of troop and equipment preparations shortly following the March annexation of Crimea.⁶⁶⁴ Indeed, until that time, Open Skies observation missions in Ukraine had frequently included Crimea; however, following Russia's annexation, overflights of the peninsula had effectively ceased, even at the specific invitation extended by Moscow on 12 May 2014.⁶⁶⁵ The reason for this is self-evident: even with the concurrence of Kiev, any observation overflight of Crimea coordinated with Moscow would signal States Parties' acknowledgement of the legitimacy of its illegal appropriation of that territory. This once again demonstrates the damaging effect of repeated and unchecked

⁶⁶¹ Hartwig Spitzer, "Open Skies: cooperative transparency agreement works in stormy times," n.p.

⁶⁶² Ibid, n.p.

⁶⁶³ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 18.

⁶⁶⁴ Hartwig Spitzer, "Open Skies: cooperative transparency agreement works in stormy times," n.p.

⁶⁶⁵ Ibid, n.p.

manipulation of, and defection from, a legally-binding security regime in fulfilment of an individual State Party's self-interests.

For all of 2014, a total of eight observation flight missions were flown over Ukraine and 35 missions over the Russian Federation (not all of which were conducted in proximity of the area of conflict).⁶⁶⁶ On 6 June 2014, one of Ukraine's two Open Skies AN-30B aircraft, conducting a non-Treaty national surveillance mission, was shot down by pro-Russian rebels near Slavyansk, located within the eastern conflict zone.⁶⁶⁷ This was followed by the shoot-down of Malaysian Air Flight MH17, northeast of Donetsk, on 17 July 2014.⁶⁶⁸ These events, reinforced by Moscow's notification that air space safety could not be assured within 45 kilometres of the Ukrainian border, led to a corresponding reduction of Open Skies observation flight missions in the respective Russian and Ukrainian border regions.⁶⁶⁹

The Ukrainian crisis demonstrates both the practical utility and limitations of the Open Skies regime in regional conflicts. Indeed, its fundamental concept was more than proven to be effective in confirming the situation on the ground, thereby reducing the potential for further military escalation based upon "worse case assumptions." As noted by Dan Lindley and Hartwig Spitzer, as a CSBM mechanism, Open Skies functions most effectively when there exists "a limited zone of relations between former

⁶⁶⁶ Open Skies Consultative Commission, U.S. Delegation, *Open Skies Treaty Observation Flights 2014*, 1-3.

⁶⁶⁷ Russia Today, "Slavyansk self-defense forces shoot down Kiev 'spy' plane," *RT News*, 6 June 2014 [journal on-line]; available from <http://rt.com/news/164292-ukraine-plane-down-slavyansk/>; Internet; accessed 10 April 2015, n.p.

⁶⁶⁸ British Broadcasting Corporation, "MH17 Malaysia plane crash in Ukraine: What we know," *BBC News*, 9 September 2014 [journal on-line]; available from <http://www.bbc.com/news/world-europe-28357880>; Internet; accessed 10 April 2015, n.p.

⁶⁶⁹ Hartwig Spitzer, "Open Skies: cooperative transparency agreement works in stormy times," n.p.

and potential future adversaries.”⁶⁷⁰ This “limited zone” involves a combination of established mistrust with the recognised need for sufficient cooperation to enable observation.⁶⁷¹ Observation overflights were unquestionably useful in confirming the presence or non-presence of specific deployments, troop dispositions and other specified requirements, but only when afforded a suitably permissive environment within to safely and effectively operate. This illustrates that observation flights are indeed possible even within certain conflict areas, provided that sufficient coordination and other precautionary measures, such as “stand-off” mission profiles, are undertaken. As demonstrated by the shoot-down of the AN-30B, MH17 and other aircraft, however, the sophistication of armaments and unpredictability of Russian-backed separatist forces rendered airborne observation increasingly unfeasible. Even where permissible, observation was further compromised by Russia’s characteristic manipulation of Treaty provisions. This, in turn, impaired the Treaty’s effectiveness as a CSBM in contributing to the de-escalation of the conflict and stabilising the situation on the ground.

Conclusions and Implications

This chapter has sought to examine the Open Skies Treaty with particular attention accorded to its purpose, characteristics and key developments in its oversight and implementation. While this examination has highlighted the benefits of the regime’s fundamental concept and practical application, it has also noted events and trends that have clearly contributed to its overall encumbrance.

⁶⁷⁰ Dan Lindley, “Cooperative Airborne Monitoring: Opening the Skies to Promote Peace, Protect the Environment, and Cope with Natural Disasters,” 5.

⁶⁷¹ Hartwig Spitzer, “Open Skies: cooperative transparency agreement works in stormy times,” n.p.

While the three principal arms control regimes feature various degrees of complementarity, the Open Skies Treaty is singularly unique in its ability to support a broad range of proliferation and regional security mechanisms, while functioning in its own right as both a standalone CSBM and regulated means of national reconnaissance. Notwithstanding its specified aims and objectives, the value of the regime as an intelligence tool must therefore be acknowledged as one of its most important features, particularly for those States Parties possessing the technical capability to exploit imagery for this purpose. Although frequently misunderstood or even dismissed as having limited surveillance value, it is apparent that airborne observation capabilities afforded by the regime are unique and cannot be replicated by satellite systems. It is equally evident that the investment made by the Russian Federation in its Open Skies resources reflects both the value of aerial reconnaissance capability of this nature, and as means of offsetting deficiencies in other national technical capabilities.

Despite an extended period of development and various teething pains in its first decade of implementation, the fundamental concept of the Treaty has been well demonstrated and its practical utility repeatedly proven. Moreover, the relative simplicity of Open Skies renders it particularly well suited to adaptation, without extensive alteration of its core framework. As such, the Treaty is inherently scalable, with the ability to quickly assume other missions, including environmental monitoring, disaster response, or biological and chemical agent detection.

Even with the Treaty's widely accepted conceptual validity and proven effectiveness, the lack of compliance and conformity in its implementation, along with fundamental shortcomings in addressing and correcting contraventions, have seriously

undermined its integrity. Indeed, despite some limited success in resolving some transgressions, the deliberate impairment of the regime in its application vis-à-vis conflict situations has been especially paradoxical, given the basis of its conception. While the OSCC/OSCE may be faulted in several respects (including their overall lethargy in dealing with relatively straightforward matters of compliance), one must bear in mind that culpability must ultimately be assigned to the offender:

As a principle, the ‘automatic’ consequence that international law attaches to instances of non-compliance by a State constituting an internationally wrongful act, is international responsibility of the perpetrator State....⁶⁷² In arms control the consequences of an internationally wrongful act are in principle no different from those in other branches of international law.⁶⁷³

Despite the intention to both enable a modicum of balanced national airborne observation capability, inherent disparities have existed since the Treaty’s inception and will almost certainly continue with the transition to digital technologies. Indeed, the most expensive of the three major conventional mechanisms to implement, Open Skies could ultimately prove too costly for many, if not most, to sustain. This has already been indicated by some States Parties’ decisions to significantly reduce or effectively withdraw from conducting “active” missions, as was the case specifically cited by some members of the C-130 Pod Group.⁶⁷⁴ Indeed, the OSIS Focus Group exemplifies the considerable challenges faced by a reduced number of “second-tier” States Parties in undertaking such a project. Another major investment will be required in the extension or replacement of most of the Open Skies mission platforms. Although the combination

⁶⁷² International Law Commission, *Article I on the Draft Articles on State Responsibility* (1998), as cited by Guido Den Dekker, *The Law of Arms Control: International Supervision and Enforcement* (The Hague: Martinus Nijhoff, 2001), 340-341.

⁶⁷³ Guido Den Dekker, *The Law of Arms Control: International Supervision and Enforcement*, 341.

⁶⁷⁴ Canadian Strategic Joint Staff official, interview with the author, 10 April 2015.

of digital transition with aircraft acquisition represents a potential opportunity for prudent collaborative investment, such as a common operating platform, there does not appear to be much interest by, or within, the OSCC in pursuing such an option. As such, a common capability baseline appears somewhat remote. Accordingly, while digital technologies and updated mission platforms can be expected to ultimately enhance capability, improve efficiencies and reduce costs in the long term, the manner in which this is accomplished may only serve to further delineate the “haves” from the “have nots.”

In addition to modernization, expansion and regional adaptation of Open Skies would be potentially beneficial in not only promulgating its concept, but also broadening the community’s base of support and subscription. Despite some earlier momentum, this agenda appears to be generally stalled and would require suitable political reinvigoration to progress. Turkey’s resistance to Cyprus’ accession to the Treaty provides ample evidence of just how difficult this can be.

When not interfered with, Open Skies missions have continued to function comparatively well and despite its overall impairment, the Treaty remains nominally functional in spite of the overall deterioration of East-West security relations. Indeed, as noted by Commander Chris Nelson, a United States Navy aviator and Open Skies mission specialist: “the Open Skies treaty is one avenue for diplomacy that is still open.”⁶⁷⁵ A more pragmatic explanation, however, is that the regime’s survival is ultimately attributable to the fact that it continues to serve Russian and American national interests. Irrespectively, varied and repeated attempts to circumvent,

⁶⁷⁵ Seth Robson, “US Flying over Russia to take photos under Open Skies Treaty,” *Stars and Stripes*, 19 November 2014, 1.

manipulate and suppress oversight and implementation -- particularly during periods of heightened tension and conflict -- have significantly enervated the Treaty.

Despite these various impairments, the two major States Parties -- the Russian Federation and the United States -- can be expected to support the regime so long as their respective security agendas are served. Indeed, Moscow's greater dependence upon airborne observation and reconnaissance requirements, along with its considerable current investment in modernisation provide some measure of assurance. For Washington, above and beyond the technical benefits, support for the regime constitutes an important foreign policy and leadership commitment. Nevertheless, as long as its relatively straightforward provisions continue to be flagrantly contravened without consequence, *the Treaty on Open Skies* will continue to deteriorate as a mainstream CSBM mechanism. It therefore remains incumbent upon all States Parties and the OSCE to rededicate themselves to upholding the regime's fundamental integrity. A good start would be the fundamental acceptance of and adherence to its binding provisions and operative construct, as originally envisioned and agreed.

CHAPTER 6

ANALYSIS

Having reviewed the concept and evolution of conventional arms control, along with the detailed case study examinations of the three major contemporary regimes, this chapter will further ruminate upon the central proposition of the thesis, supported by the broadened perspective gleaned from the study undertaken. Additional viewpoints, including those obtained through interviews with subject matter experts, will also be noted as they relate to this broadened perspective. This will provide added context to specific determinations rendered concerning the overall decline of conventional arms control. From these determinations, the implications of this decline and the prospects for rehabilitation and revival can be more effectively derived.

As previously noted, the achievements attained in conventional arms control represent remarkable innovations that have paralleled broader advancements in contemporary international relations. While the principles, concepts and goals embodied in the CFE Treaty, Vienna Document and Open Skies Treaty are singularly distinct accomplishments in their own right, their practical utility, effectiveness and relevance have been adversely affected by a wide range of factors, of which their state of elemental functionality constitutes a key underlying aspect. That is, common willingness, commitment and cooperation have been weakened not only by unfavourable external conditions, but also by specific deficiencies and breakdowns within the regime constructs themselves. In addition to adversative geostrategic, political, economic and human security factors, operative failures in oversight and

implementation have led to ever-increasing instances of non-conformity, non-compliance and outright abrogation of legally- and politically-binding obligations. Indeed, a mutually inclusive dynamic of unfavourable external inducement and internal dysfunction has significantly impeded the practical application, sustainment and alteration of these regimes. This outcome constitutes a significant element in the overall degradation of security and stability in the Euro-Atlantic and Eurasian regions.

While the inherent complexities of the international security dynamic frequently exceed states' capacities to control, shape or otherwise influence events, conventional arms control regimes provide the means of regulated authority and ordered effect within their defined jurisdictions. Accordingly, the impaired functionality of regimes can be further considered in terms of their authority and effect being undermined as a result of:

- failures in uniformly fulfilling established provisions; and
- failures in resolving issues inherent to the regime models themselves.

This study has demonstrated that various fundamental faults have been neither assuaged nor even addressed within the practical oversight and execution of these regimes. Indeed, efforts undertaken at various levels to rectify or otherwise mitigate these faults have all too frequently “missed the mark” by overlooking essential functionality in favour of symptomatic or aesthetic alterations. Otherwise, attempts made to resolve specific paucities in authority, management and application have frequently proven deficient in correlating them with the rudimentary operation of regime models. Consequently, corrective actions (i.e., amendments, revisions,

modifications and adjustments) have often left underlying core deficiencies unrequited and in several instances, the regimes themselves further impaired.

Governance-Management-Implementation Failure

Colonel Beat Spycher of the Swiss Verification Unit developed one of the more effectual schematic characterisations of the breakdown of the governance-management-implementation model of conventional arms control introduced in Chapter 2. In a joint Switzerland-Canada presentation to the OSCE Heads of Verification Meeting in December 2012, Spycher used a modification of the model to illustrate not only the elemental effects of unchecked non-compliance and non-conformity, but also the greater imbalance created from failing to maintain its essential functionality.⁶⁷⁶ Within the model's "cycle," this is depicted as both a disconnection between its three interdependent components, as well as deviation from established common standards of compliance and conformity. Specifically:

- implementation (most notably, verification and CSBM operations) becomes increasingly invalidated when detected occurrences of non-compliance and non-conformity (i.e., feedback) are overlooked, unreported, mischaracterised or otherwise left unaddressed in either the implementation or consultation/coordination phases;
- this results in the suppression, limitation or distortion of technical accuracy and accountability;

⁶⁷⁶ Department of National Defence, Strategic Joint Staff Arms Control Verification and Swiss Verification Unit. *Implementation Issues. Considerations for OSCE Heads of Verification Meeting* (Ottawa: DND Canada, 2012), 11.

- in turn, policy and planning are rendered increasingly isolated as means of processing and responding to coordinated feedback, resulting in significant “gaps” in the formulation of overarching guidance and direction; and
- as the cycle’s process of “continuous feedback and improvement” becomes increasingly obscured, this results in what Spycher refers to as a “self-reinforcing negative spiral” which, left unchecked, deviates further away from the model.⁶⁷⁷

Certainly, Spycher’s characterisation has been illustrated throughout this study, such as the imposition of “national procedures” over regime provisions, various constraints placed verification personnel, invalid Open Skies flight restrictions or the outright refusal to submit obligatory data, accept inspections or even participate in consultations. For the most part, these infringements have occurred without suitable formal discernment, adjudication or counteraction by the corresponding OSCE implementing bodies. Even when deviations have reached the point where their effects (or follow-on consequences) have been formally noted, they have often been subsequently disregarded, deferred or when deemed to warrant a response, moderated or misinterpreted in terms of their root causes. Consequently, corrective actions, when attempted, have been frequently misdirected, including the various adjustments made to corresponding regime provisions. As a result of the ineffectiveness of the actions undertaken, these essential failings have progressively eroded operating models, including their inherent means of rectification. Left largely unresolved, the “self-reinforcing negative spiral” created by these underlying deficiencies has continued to

⁶⁷⁷ Department of National Defence, Strategic Joint Staff Arms Control Verification and Swiss Verification Unit. *Implementation Issues. Considerations for OSCE Heads of Verification Meeting*, 11.

undermine and weaken the regimes, with subsequent adverse impact upon the very security and stability they were designed to support and preserve.

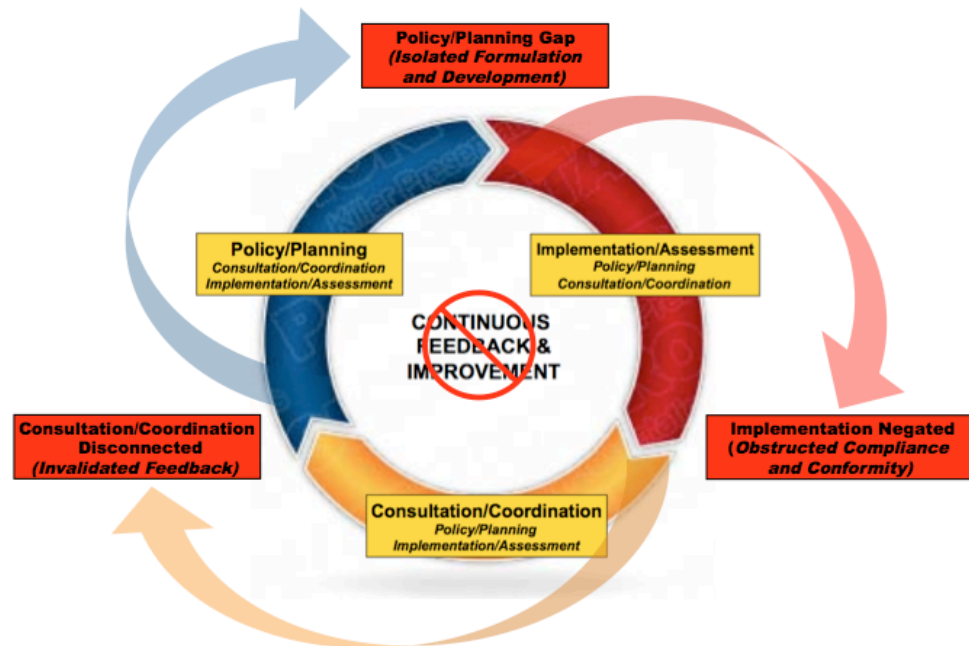


Figure 6.1: Governance-Management-Implementation Failure⁶⁷⁸

As previously discussed, the lack of priority accorded to maintaining effective oversight and sustainment of conventional arms control mechanisms is clearly indicative of various degrees of complacency, indolence and diminished commitment in keeping them viable at their most fundamental levels. Diminished investment made in personnel and material resources within all components of regime oversight and implementation have also specifically contributed to corresponding degradations in conceptual awareness, subject matter knowledge and technical expertise -- all of which must be taken into account as having contributed to this overall breakdown. While the need for suitable updating and recalibration of these mechanisms is certainly acknowledged, the diminished practical understanding of their critical components,

⁶⁷⁸ Adapted from Department of National Defence, Strategic Joint Staff Arms Control Verification and Swiss Verification Unit. *Implementation Issues. Considerations for OSCE Heads of Verification Meeting*, 11.

interrelationships and interdependencies has led to increasingly specious remedial approaches. Indeed, the resultant propensity to focus upon indicative, rather than root causes, have frequently resulted in the injudicious determination that the principal regimes and their associated concepts have simply become out-dated and obsolete.

Cooperation, Commitment, Compliance and Conformity

Arms control regimes are neither self-implementing, nor do they operate in a void. They function within the broader construct of international security relations as formalised, consensus-based mechanisms through which specified security objectives are attained. Whereas the behaviours of states only generally subscribe to customary norms derived from common legal principles, parties to any legitimate regime are explicitly bound to conform to the standards and rules embodied within its provisions. Therefore, in contrast with the complex variations of international relations generally, arms control regimes constitute a formal entrenchment of states' collective willingness to submit to a converged set of codified, rules-based behaviours. Therefore, while obviously affected by myriad external influences, regime success is also contingent upon parties uniformly conducting themselves in conformity and compliance with the terms prescribed. Historically, the relative importance of regime functionality, heavily influenced by governance, has been greatly underestimated in this respect.

By way of added context, it should be emphasised that regime compliance and conformity should not be regarded as a static condition, but rather a systematised commitment to active, on-going adherence to established common standards. As noted in this study, these common standards are derived from broader political processes,

interests and differences that ultimately constitute the “common will” embodied by the regime. While differences exist between the legal foundations of the CFE and Open Skies Treaties and the political basis of the Vienna Document, they all have some measure of binding force. As noted by Nick Flynn and Nicola Peart, while legally-binding regimes provide a stronger basis for compliance as international mechanisms, both legally- and politically-binding mechanisms depend more upon “cooperation, consensus and reciprocity rather than any ultimate power of compulsion.”⁶⁷⁹ Flynn and Peart further acknowledge that “compliance mechanisms are strengthened by the existence of international fora which have the formal power to give rulings regarding interpretations of the agreed rules.”⁶⁸⁰

Any form of divergence, even that related to subjective or selective interpretation, generally translates into some form of non-compliance and/or non-conformity. Although valid mistakes may occur on occasion, adherence to established common standards reduces uncertainty in determining if a given case of non-compliance is attributable to inadvertent error, misinterpretation or deliberate intent, thereby facilitating the selection of appropriate courses of action to resolve. Regimes, therefore, should not be gauged simply by the attainment of their “end-states,” but rather by the manner in which their fundamental coherence is upheld. In this respect, it is the regime’s overarching authority that must ultimately be called upon to assure the adherence to standards and fulfilment of obligations, as well as exercise the means through which to hold parties accountable.

⁶⁷⁹ Nick Flynn and Nicola Peart, “The Role of Political Agreement in a Legally Binding Outcome,” *ECBI Background Paper* (Oxford: European Capacity Building Initiative, 2010), 11.

⁶⁸⁰ Nick Flynn and Nicola Peart, “The Role of Political Agreement in a Legally Binding Outcome,” 12.

While arms control regimes parallel international relations in terms of their dependence upon cooperation, the difference is the binding commitment made to both conform to and comply with the codified rules of a given model. Recognising the criticality of compliance and conformity, Dr. Harald Müller of the Peace Research Institute noted three necessary pre-conditions: treaty community coherence, leadership and great power cooperation.⁶⁸¹ He further observed:

Rule-bound behaviour was voluntarily undertaken, and compliance thus rests – similar to domestic law effectiveness – not on the eternal fear of forceful enforcement, but on the vast majority of parties abiding voluntarily by the rules in good faith. ...cohesion is the precondition for dealing successfully with the most problematic compliance issues: ambiguities in state behaviour that require clarification, and unambiguous breaches of treaty obligations that require a response.⁶⁸²

While supportive of the concept of arms control, Müller's outlook for the effective and compliant operation of these regimes was decidedly pessimistic. Of note, he focused his concern on the actors (parties) -- particularly the leading ones -- for not fulfilling their "basic duty to play by the rules and integrate themselves into the multilateral frameworks that need to be saved, maintained, and improved...."⁶⁸³ Although the failure to conform and integrate can be attributed to various causes, it remains evident that even with binding codification, regimes nevertheless constitute compromises that are inherently conflicted, as affirmed by Christopher Osakwe in his appraisal of Soviet legal precepts:

⁶⁸¹ Harald Müller, "Compliance Politics: A Critical Analysis of Multinational Arms Control Treaty Enforcement," *The Nonproliferation Review* (Summer 2000): 79.

⁶⁸² Harald Müller, "Compliance Politics: A Critical Analysis of Multinational Arms Control Treaty Enforcement," 79.

⁶⁸³ Ibid: 89.

It is only a “coordinated will” (*soglasovannaia volia*) which means that it has an inbuilt unliquidated disaccord as a necessary remnant of the original disagreements between the parties. The result therefore is not a perfect synthesis of the original wills and does not result in any common will, but rather in a coordinated will.⁶⁸⁴

While characterisations vary, this study has upheld the fundamental view that in order to be viable in meeting their specified objectives, conventional arms control regimes must be sustained through assured compliance and conformity with their rules and provisions, in both letter and spirit. As the “inbuilt unliquidated disaccord” of these regimes lends itself to varying degrees of inherent instability, this begins with the establishment and maintenance of the conditions necessary to stave off the intrinsic propensity to deviate (or “defect,” per Robert Axelrod). These conditions (characterised by Müller as “community coherence, leadership and great power cooperation”) induce the “coordinated will” necessary to maintain compliance and conformity. Therefore, regardless of its provisions, including verification, a regime is only as strong as its ability to sustain parties’ collective resolve in adhering to its specified standards of conduct and behaviour.

Varied Perspectives, Common Elements

As might be expected, the consultations and interviews undertaken in support of this study gleaned a wide range of perspectives and opinions in accounting for the decline in contemporary conventional arms control, the implications of this decline, and the prospects for recovery. While attempts were made to cover a broad representative

⁶⁸⁴ Christopher Osakwe, “Public International Law,” in *Encyclopedia of Soviet Law Second Revised Edition*, ed. Ferdinand Joseph Maria Feldbrugge, Gerard Pieter Van den Berg and William Bradford Simons (Dordrecht: Martinus Nijhoff Publishers, 1985), 641.

sampling of subject matter experts (e.g., policy-makers, diplomats, military officials, analysts, academics, etc.), a surprising number of those directly involved in regime oversight and implementation declined to be formally interviewed. Others expressed a measure of reluctance in their participation. Given the specific orientation and critical nature of this thesis, such common reticence appears to denote the sensitivity of the issue within the OSCE and the arms control community writ large. This reluctance was especially evident amongst officials from the Russian Federation, Eastern European and Central Asian states, most of whom were highly taciturn in providing any appraisal of the conventional arms control and CSBM regimes. Indeed, of the numerous interview requests made to OSCE delegations and representatives from corresponding capitals, only a very small number were approved. In some instances, consent was granted on the condition of non-direct attribution. Of those interviewed, comments were characteristically precautionary, deflective or even supercilious in nature. Nevertheless, a select few did provide some very insightful opinions, some of which are summarised here.

Lamberto Zannier, OSCE. The OSCE's Secretary General, Lamberto Zannier, acknowledges the pessimism that now pervades the conventional arms control community and how much of this has resulted from unresolved CFE Treaty issues. He specifically notes the "difficulties in fully assessing these issues," expressing particular concern about their "spill-over effect" on "soft security" writ large. He also stresses the need for "fresh thinking," as well as more effectively factoring in "lessons learned" within the OSCE's processes to improve its oversight.⁶⁸⁵

⁶⁸⁵ Lamberto Zannier, interview with the author, OSCE Headquarters, Vienna, 26 June 2014.

Zannier also notes more recent difficulties encountered with the implementation of Vienna Document Chapter 3 (Risk Reduction) provisions in response to the Ukrainian crisis. These most recent developments have provided greater imperative to “looking ahead” and working together to develop a “more uniform” OSCE framework of security mechanisms. He acknowledges that, despite on-going efforts, more is required to address such fundamental areas as categorisations, capabilities, concentrations of forces, etc.; all of which require “further assessment.” Some frustrations can be attributed to “inflated expectations” and in this regard, there needs to be a better understanding of the inherent limitations of the OSCE as both a forum for security dialogue and as an instrument of implementation. Zannier’s overall outlook is one of optimism in the OSCE’s ability to continue making a positive difference in regional and sub-regional security. Making no illusions that “significant challenges” lay ahead, he nevertheless stresses that “we should not be overly pessimistic,” expressing confidence in the inherent advantage of the OSCE’s flexible, adaptive approach.⁶⁸⁶

Diana Marvin, United States Department of State. A senior advisor in the Office of Euro-Atlantic Security, Bureau of Arms Control, Verification and Compliance of the United States Department of State, Diana Marvin regards the current state of conventional arms control as a more of an “identity crisis” than outright degradation. With conventional munitions greatly reduced, force structures dramatically reshaped, and the exchange of data significantly expanded, the overall improvement in security relationships achieved by these regimes has itself altered the security landscape.

⁶⁸⁶ Lamberto Zannier, interview with the author, 26 June 2014.

Accordingly, while remaining valuable, these regimes no longer “fit” the current reality.⁶⁸⁷

Nevertheless, Marvin believes that sufficient basis exists to “move forward,” stressing that all three regimes remain in force and do not require outright recodification. Noting the need to “reaffirm our commitment to our commitments,” she emphasises that the United States neither needs nor wants to “start over from scratch.” With regard to the outlook for the recovery of these regimes, she expresses optimism, while at the same time acknowledging that competition with other, more immediate security priorities will require “sustained effort over the long-term.” She maintains that sufficient constituency still exists within the international community for verifiable control-based security mechanisms, of which the three major conventional arms control regimes continue to constitute an important foundation.⁶⁸⁸

Marvin underscores the importance of making adjustments that are realistically matched with the significant changes that have taken place in conventional military technologies, capabilities and corresponding structures, emphasising, “we don’t want to do arms control for the sake of arms control. We do want the agreements to be relevant and satisfy the legitimate security needs of the parties, which is an iterative process.” For example, the current “one-size fits all” paradigm concerning large-scale military activities might be more appropriately matched or even tiered with the military forces of specific states. This is a question of attaining “balance,” including the “sweet-spot” for verification. Economics must also be weighed as a major consideration. Finally, Marvin highlights the opportunities afforded by the current “maintenance phase,”

⁶⁸⁷ Diana Marvin, interview with the author, OSCE Headquarters, Vienna, 10 December 2013.

⁶⁸⁸ Diana Marvin, interview with the author, 10 December 2013.

during which key assessments and adjustments can be made. Notwithstanding the continued need for arms control, this includes a determination of “how much will be enough.” Noting that the regimes “are easier to maintain than to let go,” she adds that suitable expertise is required in order to suitably “evolve” them, given their inherent complexities. With many “original experts” retiring (policy officials, inspectors, etc.) this will present added challenges.⁶⁸⁹

Mathew Geertsens, OSCE. Mathew Geertsens is the Head of the Forum for Security Cooperation Support Section in the Conflict Prevention Centre of the OSCE Secretariat. He notes that under the “black and white” circumstances of the Cold War, the establishment of the three principal conventional arms control regimes was the result of enormous pressure that was translated into the “political willingness to take significant steps.” Today, the OSCE continues to work with what is essentially the same security framework, as there simply is not significant enough “pressure” to go back and create a new security model. Given the current overall state of “multi-polar security,” countries are largely unable or unwilling to engage in securing an entirely new security construct. Moreover, while it is generally accepted that renewal is required to address contemporary security concerns, at present “we don’t really know how to do this.”⁶⁹⁰

Geertsens regards regional conflicts as a particular indication of a growing problem that must be addressed, but from an arms control and CSBM perspective, “we don’t really know how to do that either. So we continue to employ the old fashioned approach.” Although actions by the OSCE concerning Moldova and Georgia “made a

⁶⁸⁹ Diana Marvin, interview with the author, 10 December 2013.

⁶⁹⁰ Mathew Geertsens, interview with the author, OSCE Headquarters, Vienna, 10 December 2013.

difference,” it would likely take a more imminent security threat to compel OSCE members to seriously seek new approaches:

The key in moving forward is to resolve our regional conflicts and we’re not doing that. While the CFE Treaty has provided our legal basis and the Vienna Document our political willingness -- which is a beautiful combination -- we need a real crisis, along with the “guts” to address the new security environment.⁶⁹¹

As Geertsen made this statement prior to the Russian annexation of Crimea in March 2014, it remains to be seen whether this most recent crisis has been enough to oblige the OSCE and its members to begin considering suitable new courses in the manner he describes.

Geertsen’s view is that ideally, the recodification of new regimes should begin from a “clean slate,” but insufficient political will exists to do so because of the absence of any real “pressure.” While the Helsinki Final Act provides a useful legal basis for this, the challenge is in aligning its principles with the current security landscape, which is predominantly regional conflict-oriented. “While the Helsinki process was drastic and today we are no longer particularly concerned about a “World War III,” its principles can nevertheless be used to advantage in the current evolutionary phase.” Given the lack of collective imperative to move forward, the OSCE has been engaged in various areas of dialogue with technical experts, academics, think tanks, etc. as means of seizing upon all opportunities available in developing a “framework of possibilities.” This will enable the Organisation to be better prepared for when political conditions are more favourable, allowing parties “to return to the table and make determinations of

⁶⁹¹ Mathew Geertsen, interview with the author, 10 December 2013.

how we will employ specific approaches and mechanisms to address specific aspects of security.”⁶⁹²

Geertsen believes that the OSCE is effectively “hibernating” in terms of attaining its full potential. He compared the Organisation’s conventional proliferation security role to “occupying a lower tier of a multi-level chessboard,” but important nevertheless. He regards the conventional-nuclear proliferation security relationship as something of a “chicken and egg scenario,” emphasising that: “we have to do both and can’t use the excuse that we need solid conventional regimes in order to discuss nuclear issues.” Regardless, the OSCE has substantial value, which has become underrated, partly because of an established “routine” that “works well,” referring to the associated verification regimes, information exchanges, and other processes. Despite being consensus organisation, the OSCE remains highly flexible in its approach to security, but suffers from a lack of recognition of its achievements. As such, it needs to better promote itself. Given the modest expansion of the OSCE’s membership, Geertsen believes that the OSCE “concept” is better to be “exported” to other regions, as continued expansion, especially involving states from other regions, risks over-extension and fragmentation. The erosion of expertise in the field of proliferation security represents another problem.⁶⁹³

When asked about his views on the future of conventional arms control, Geertsen expresses optimism “because, ultimately, we need it and people will recognize it.” He nevertheless predicts that States Parties will eventually “walk away” from the CFE Treaty, with regional agreements eventually replacing it. Indeed, the inability to

⁶⁹² Mathew Geertsen, interview with the author, 10 December 2013.

⁶⁹³ Mathew Geertsen, interview with the author, 10 December 2013.

deal with current regional crises is indicative of the difficulty in addressing this from an overarching perspective. In this respect, he envisions a “matrix of regional mechanisms” that will have overall governance through the OSCE, rather than the broad jurisdictions of current regimes.⁶⁹⁴

William Alberque, NATO Headquarters. William Alberque is the Head of the Arms Control and Coordination Section, Political Affairs and Security Policy Division, NATO Headquarters. He believes that, while there are several ways to look at the current situation, it is particularly useful to consider it from a broader regime context. He notes specifically that détente and disarmament were sought concurrently in the 1980s and 1990s, resulting in a “huge wave” of treaties that “crested” from 1996 to 1998, resulting in a “real reduction of global threats.” The “orderly and massive reductions of weaponry” resulted in a corresponding reduction of a “security imperative.” Consequently, the entire global proliferation regime had “succeeded itself to death.” In fact, it had succeeded so well that its “primary advocates stopped thinking about it.”⁶⁹⁵

Alberque provides a useful historic perspective that links broader strategic security developments with the diminishment of conventional arms control. Referring to the “remarkable dynamic” of East-West relations that had developed by the 1990s, he specifically acknowledges the very genuine positive sentiment in the contact, collaboration and closeness that had emerged at all levels. While, of course, there remained those in Moscow with a completely “different vision,” the overall positive dynamic changed dramatically with the United States’ withdrawal from Anti-Ballistic

⁶⁹⁴ Mathew Geertsens, interview with the author, 10 December 2013.

⁶⁹⁵ William Alberque, interview with the author, École royale militaire, Brussels, 28 January 2014

Missile (ABM) Treaty in 2001. While the Russians sought to discuss the matter further, Washington's decision had already been made and officials were "merely informing" Moscow of this. Indeed, attitudes in Washington had become somewhat arrogant; that is, regarding Russia as a "near failed state." Although progress was being made on Russia's 1999 "Istanbul Commitments" regarding the removal of its stationed military forces from Georgia and Moldova, this abruptly ended following the United States' withdrawal from the ABM Treaty. Although American officials believed they were still able to compel Moscow to acquiesce to the preconditions set for ratification of the Adapted CFE Treaty, the Kremlin's attitude changed to that of simply "taking away" this leverage.⁶⁹⁶

According to Alberque, the United States' withdrawal from the ABM Treaty taught the Russians that if something [i.e., a commitment] was ultimately determined not to be in their interests, they needn't subscribe to it, particularly if there were costs in doing so. This was reflected in President Vladimir Putin's actions that led to Russia's self-imposed suspension of CFE Treaty compliance in 2007. This was quickly followed by the 2008 Georgian War, during which South Ossetia and Abkhazia were effectively secured by Moscow. Since then, despite various consultations, negotiations and other approaches, no real progress has been made. According to Alberque, "by 2010 it was apparent that Putin had done enough to threaten CFE by putting it precariously on the shelf -- but not enough for Moscow to be blamed for it failing -- and to see what NATO would do in response." Since then, there have been mixed messages from Russia, but increasingly those simply signalling that "Moscow just doesn't care; transparency isn't important." Given that President Putin personally directed the suspension, it is unclear

⁶⁹⁶ William Alberque, interview with the author, 28 January 2014.

what Russia's position on a way ahead really is, as "no one below can make a decision without really knowing what the boss wants. Their position is that there is no position."⁶⁹⁷

Despite the pessimism he felt from 2004 to 2011, Alberque's opinion of the future of conventional arms control is decidedly optimistic. He stresses that the regimes continue to demonstrate the possibilities: "even during their least active phases, they remain impressive, even amazing." He considers it a particular irony that during the current period of duress, so many countries outside of the regimes have openly expressed their strong interest in the conventional arms control concept. He also acknowledges some of the internal failings caused by parties that have altered their approach to implementation under the false perception that because of the trust established, there was no longer a need to actively implement provisions:

Any time you forgo your rights you risk the treaty. Lowering one's guard is not good. As long as the treaty exists, the verifiability of it must be exercised. The existence of the regime is dependent upon the faith you have that it is working. Regardless of what you think or what is actually happening, you are cheating the system; that is, diminishing the security it is creating. To make a political decision not to implement is one thing, but to 'half ass' implementation is to undermine it.⁶⁹⁸

Alberque expressed surprise over how little arms control has been coordinated amongst NATO States Parties and participating States, noting that this could be done much better. To that effect, he is undertaking to make the necessary changes to ensure a more coordinated approach. In his view, it comes down to political engagement. While

⁶⁹⁷ William Alberque, interview with the author, 28 January 2014.

⁶⁹⁸ William Alberque, interview with the author, 28 January 2014.

it is good to see more coordination at certain levels, it remains shocking to see virtually none at others. Moreover, he stresses that in order for the regimes to survive, there must be better overall coordination and synchronisation between all three:

If you make it all tied, make it relevant, easier to understand, easier for policy makers to engage, I think there is a real chance. We're trying to do this from the inside; we're trying to do this with negotiations; trying to push people in that direction. If we're going to survive, it will be something like that and I think people are coming more and more to that conclusion. We'll see, but there is an appetite for something. There is now more thought, more questions (other than just during periods of crisis) than there have been before. These [regimes] are cornerstones of security, but they've received no mention at cabinet level. [National] leaders are actually now discussing this, which is critical.⁶⁹⁹

Jules Silberberg, United States Delegation, OSCE. Jules Silberberg currently serves as the United States Chief Arms Control Delegate to the OSCE. His views on the current state of arms control begin with its overall success and that “the absence of real threat in Europe” has contributed to the lack of commitment and even interest by European States and North American partners. That is, conventional arms control is the “victim of own success.” Nevertheless, Silberberg stresses that, “the reality is that we continue to implement commitments with one notable exception,” referring to the Russian Federation’s self-imposed suspension of its CFE Treaty commitments. Noting that arms control “works where there are political means to see commitments through,” the Russian suspension “reflects a larger political dynamic that wasn’t apparent at the time of negotiation.” Given this, the CFE Treaty’s successor will have to account for current political realities, and that this will have to be “worked out,” taking into account

⁶⁹⁹ William Alberque, interview with the author, 28 January 2014.

Moscow's renewed self-confidence, reinvigorated military and foreign policy, characterised by such things as its "insistence on consultation, if not a veto."⁷⁰⁰

Silberberg remarked that "informed decision makers" recognise that success has undermined the vitality of the three regimes and that a "constant effort" is required to sustain them. While budgets and policy decisions may be seeking ways of doing less, the counter-argument remains that the "alternative is far more expensive," and that "arms control is still a great bargain." In developing a "mechanism of renewal," he believes that "we will draw from past experiences with existing treaties along with our now altered political and military circumstances." Whether this will lead to a "blank paper or line-in line-out effort" is unknown. The manner in starting negotiations and their actual "mechanics" of the process remains to be seen: "We will likely draw upon existing treaties. All of it is up for discussion. Most people have an idea of what it looks like." He nevertheless stressed the importance of verification as a key component. In Silberberg's estimation, Vienna Document issues appear easier to address than those of the CFE Treaty, given its political, rather than legal basis.⁷⁰¹

Silberberg characterises the current state of conventional arms control as that of an "ungraceful maintenance phase." "Given that the greater international environment continues to change," he stated, "we are the point now where we admit to ourselves that piecemeal change is not enough. We need a systemic stem to stern review." Regarding the CFE Treaty, the United States' position is that "there is life in it yet," and will continue to implement, while expecting others to do the same. "Regimes are like

⁷⁰⁰ Jules Silberberg, interview with the author, OSCE Headquarters, 10 December 2013.

⁷⁰¹ Jules Silberberg, interview with the author, 10 December 2013.

engines,” he noted, “over time, they require new parts or even better, upgraded parts.”⁷⁰²

When asked about the outlook for conventional arms control, Silberberg replied:

Optimistic? Yes. Over the long term we’ll update and modernise. The problem is the day-to-day efforts in reaching consensus. We need to convince the Russians to believe in their own better nature. Remind them that they’ve expressed their commitment to collective security and convince themselves that they still want to do this. While this a tough sell, their diplomats and other professionals believe that this is the right approach.⁷⁰³

Peter Jones, University of Ottawa. Dr. Peter Jones is a professor with the Graduate School of Public and International Affairs of the University of Ottawa and the author of *Open Skies. Transparency, Confidence-Building and the End of the Cold War*. He notes a fundamental problem related to political will which is the inherent resistance of state apparatus and their bureaucracies to major change, such as that represented by conventional arms control regimes and particularly exemplified by the Open Skies Treaty. Accordingly, direct, high-level political guidance and control must be employed and maintained in order to ensure the necessary level of on-going cooperation for a given regime to effectively function. Jones also acknowledges the corresponding political and diplomatic investment that must be made and sustained over time in order to preserve a viable “network of agreements.”⁷⁰⁴

Jones also notes the wholly uncommon circumstances that enabled the successful final negotiations on Open Skies, which were preceded by not only a weakened and collapsing Soviet Union, but whose leader (and proponent) had managed

⁷⁰² Jules Silberberg, interview with the author, 10 December 2013.

⁷⁰³ Jules Silberberg, interview with the author, 10 December 2013.

⁷⁰⁴ Peter Jones, interview with the author, University of Ottawa, 27 July 2014.

to survive an attempted coup by those opposed to Russian “acquiescence,” including that perceived to be represented by the Treaty. While these rapidly developing external events added to the political complexity, they were nevertheless directly translated into the level and character of cooperation and common will that developed in consultations and negotiations. In this respect, the tumultuous conditions that enabled the codification of the Treaty were clearly exceptional. The resultant regime was therefore unique in the level of cooperation and equality that was established amongst its parties, regardless of their respective technical capacities.⁷⁰⁵

With respect to the outlook for conventional arms control, Jones specifically notes the comparative advantage of the Open Skies concept over the other conventional regimes, given its conceptual simplicity in comparison with verification undertaken through the CFE Treaty and Vienna Document. He is nevertheless mindful of some of the similarities that exist with the other regimes, such as those concerning States Parties’ interdependence and the potential for roadblocks in a consensus-based regime, as aptly demonstrated by Turkey over the Cypress accession issue. There also exist persistent issues in the relationship between the OSCE as the Treaty’s governing institution and certain States Parties. Regardless, cooperative aerial monitoring clearly stands out from its counterparts, in that it functions effectively as an autonomous CSBM regime, but also effectively interacts with and supports other security mechanisms. Accordingly, despite a number of issues, *the Treaty on Open Skies* provides a promising conceptual model for future expansion and adaptation, thereby improving strategic security relations in other regions.⁷⁰⁶

⁷⁰⁵ Peter Jones, interview with the author, 27 July 2014.

⁷⁰⁶ Peter Jones, interview with the author, 27 July 2014.

Senior Diplomat, Belarusian Permanent Delegation, OSCE. An interview conducted with a member of the Belarusian Permanent Delegation to the OSCE provided some particularly useful insight from the Russian Federation's closest security partner. While acknowledging the accomplishments of conventional arms control, he noted its overall degradation despite his country's efforts to act as an interlocutor between Western OSCE member states and Moscow. Referring to the CFE Treaty as clearly "obsolete" and the lack of progress in addressing fundamental issues, he emphasised that nevertheless, "we are still here," seven years after Russia's self-imposed suspension. Given his direct involvement, the official expressed overall pessimism regarding the OSCE's ability to deal with the CFE Treaty issue, describing the Joint Consultative Group as effectively "useless." While "CFE at 36" negotiations had come close to addressing major faults in the efforts to transition to a viable adapted treaty, various associated details had stalled the process. Moreover, the most recent Ukrainian crisis had "demonstrated the lack of effectiveness of the OSCE's political-military toolbox," suggesting that better approaches might be found outside of the Organisation. The official specifically noted the lack of effective use of Chapter 3 (Risk Reduction) of the Vienna Document, which had raised the question of the regime's "utility and practicality." He characterised Vienna Document 2011 modifications as largely technical and "not amounting to much," adding that the consensus required had rendered the many attempts to effectively update it as "problematic."⁷⁰⁷

The official's overall assessment of conventional arms control was that while it was conceptually useful in conflict prevention and post-conflict rehabilitation, it was not viable for crisis management. Indeed, the various bilateral confidence- and security-

⁷⁰⁷ Senior official of the Belarusian Permanent Delegation to the OSCE, interview with the author, OSCE Headquarters, 26 June 2014.

building arrangements that Belarus had entered into with countries such as Lithuania, Latvia and Ukraine had demonstrated that “there were possibilities” and that in his opinion, various sub-regional adaptations might prove to be a “viable alternative” to overarching regimes. Emphasising that “we don’t need to reinvent the wheel,” he acknowledged the continued utility of information exchanges, ceilings and verification. This, however, could largely be accomplished through sub-regional mechanisms. Although he opined that the OSCE “still has a role to play,” it would need to be suitably adapted to a network of sub-regional, rather than overarching multinational regimes.⁷⁰⁸

Arne Knapskog, Norwegian Permanent Delegation, OSCE. Lieutenant-Colonel Arne Knapskog is the Military Advisor to the Norwegian Permanent Delegation to the OSCE. His view of the current state of conventional arms control is straightforward. He believes that, having lost its “sexiness,” its vision and purpose have become progressively devalued. The “system” finds itself increasingly fragmented, with the responsibility of its oversight and operation relegated to junior personnel possessing little expertise. This degradation has occurred at various levels and within all components, which is evident within the OSCE, as well as within NATO’s conventional arms control bodies.⁷⁰⁹

Knapskog regards the current security situation in Europe as a clear indication of the state of conventional arms control and CSBMs and openly asks whether the current crisis in Ukraine highlights the fundamental “weaknesses or strengths” of the OSCE’s “pillars of security.” When asked about his view on the future of conventional arms

⁷⁰⁸ Senior official of the Belarusian Permanent Delegation to the OSCE, interview with the author, 26 June 2014.

⁷⁰⁹ Lieutenant-Colonel Arne Knapskog, interview with the author, OSCE Headquarters, 26 June 2014.

control, he flatly stated that he is “neither optimistic nor pessimistic, but realistic,” adding, “we haven’t reached bottom... yet.”⁷¹⁰ Knapskog believes that the critical path for the OSCE in rehabilitating conventional arms control begins with “getting the Russians back” as active, engaged partners. He has found the various OSCE approaches taken to be “frustrating and repetitive.” Knapskog sees the overall effort to address the current degraded state of conventional arms control as a broader and extended process that will likely take five to ten years to yield any real results. He nevertheless fully believes in the concept and would like to see it re-established as a fundamental component of security.⁷¹¹

Senior Diplomat, Azeri Delegation, OSCE. An official of the Permanent Mission of Azerbaijan to the OSCE conveyed a degree of frustration in characterising the current state of conventional arms control, given the specific circumstances of his country’s longstanding conflict with Armenia. Emphasising that while “revitalisation” remains a worthy goal and that the “basic elements” of the CFE Treaty and Vienna Document remain sound, there are others that are no longer viable. He specifically emphasised the critical importance of equality and, as might be expected, the territorial integrity of States Parties and participating States, in keeping with the Helsinki Principles. “Without such assurances they cannot be effective,” referring to both CFE Treaty and Vienna Document provisions. He also stressed Azerbaijan’s security situation and its impact upon implementation, stating that, given the security situation with Armenia, there were “circumstances that limited its ability to fully implement.” This comment denoted the various constraints his government has imposed upon inspections and evaluations conducted within Azerbaijan. The official was nevertheless

⁷¹⁰ Lieutenant-Colonel Arne Knapskog, interview with the author, 26 June 2014.

⁷¹¹ Lieutenant-Colonel Arne Knapskog, interview with the author, 26 June 2014.

adamant about Baku's sincere desire to "fully implement," and expressed open annoyance with the "accusations" of non-compliance that had been made against his country.⁷¹²

When asked about his view on the future of conventional arms control, he stressed the imperative of "reviving" the regimes as a "common goal" that all OSCE member states needed to work toward. He further emphasised that, notwithstanding Azerbaijan's unique circumstances, it is "on-board" with its support of conventional arms control and corresponding OSCE mechanisms.⁷¹³

Policy Official, Ministry of Defence, United Kingdom. An official of the Arms Control and Counter Proliferation Policy Department of the Ministry of Defence of the United Kingdom openly acknowledged the "weakened state" of conventional arms control and how both its fundamental tools and knowledge base had "eroded." The combined effect of this was an overall diminished system. She also acknowledged that successive defence reviews in the United Kingdom had placed additional pressure on its own conventional arms control resources, given the determinations that had been made regarding "core" and "non-core" operations and activities. This had been somewhat exacerbated by a perceived "lack of strategic vision" by the OSCE, along with associated EU and NATO "politics." Seeing conventional arms control "floundering," the United Kingdom's posture had become increasingly "reactive," vice "proactive," with successive defence reviews adopting a "risk management" approach.⁷¹⁴

⁷¹² Official of the Permanent Mission of Azerbaijan to the OSCE, interview with the author, OSCE Headquarters, 26 June 2014.

⁷¹³ Official of the Permanent Mission of Azerbaijan to the OSCE, interview with the author, 26 June 2014.

⁷¹⁴ Official of the UK MoD Arms Control and Counter Proliferation Policy Department, interview with the author, Vienna, 25 June 2014.

The official acknowledged that the growing complexities of the OSCE-EU-NATO dynamic had altered the United Kingdom's view of European proliferation security landscape. This, combined with adjusted defence priorities and cutbacks, had significantly impacted Britain's traditionally strong support to conventional arms control and CSBMs. Cutbacks had also significantly impacted the Joint Arms Control Implementation Group (the United Kingdom's military verification unit) in the form of major reductions in personnel, equipment and operating budgets.⁷¹⁵

Despite this rather bleak portrayal, the official expressed a measure of optimism over the "shift" that was occurring in the Ministry of Defence's "strategic thinking." That is, a general reappraisal of European and Eurasian security had recognised that significant "gaps" had developed in Britain's arms control engagement as a means of contributing to regional stabilisation and reducing the risk of conflict. Indeed, associated NATO summit discussions and internal reviews also suggested that the fundamental concept of conventional arms control was being re-embraced. While this had been recognised in the United Kingdom Government's 2010 Strategic and Defence and Security Review,⁷¹⁶ recent events -- most notably those in Ukraine -- had provided what she described as the necessary "strategic shock." The official opined that this would likely be acknowledged in the 2015 Strategic Defence and Security Review (which the author subsequently confirmed as a designated "tier two priority risk"⁷¹⁷). This positive development notwithstanding, the official also emphasised the need to address waning regime oversight and implementation, as exemplified by the

⁷¹⁵ Official of the UK MoD Arms Control and Counter Proliferation Policy Department, interview with the author, 25 June 2014.

⁷¹⁶ Her Majesty's Government, *Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review* (London: Her Majesty's Stationary Office, 2010).

⁷¹⁷ Her Majesty's Government, *National Security Strategy and Strategic Defence and Security Review 2015. A Secure and Prosperous United Kingdom* (London: Her Majesty's Stationary Office, 2015), 87.

“weaknesses” exposed in the execution of Vienna Document provisions vis-à-vis Ukraine. She added that this was partly attributable to the OSCE Forum for Security Cooperation’s propensity to avoid “rocking the boat.”⁷¹⁸

Jörn Wiederholz, NATO Headquarters. Lieutenant-Colonel Jörn Wiederholz is a German arms control specialist serving with NATO’s Arms Control and Coordination Section (Political Affairs and Security Policy Division). He notes with some irony that while the conventional arms control concept “is more relevant now than ever,” the principal regimes “have not suitably adapted to realities” following the end of the Cold War. He believes that the various efforts made to update and modernise regimes have “lost sight of their fundamental purpose,” and that despite past reductions, military capabilities and activities remain the principal threat. Accordingly, exchanged military data, notification, monitoring and, where called for, military observers remain highly relevant means of attaining and preserving security. He adds that these fundamentals are “not just a sheet of paper, but a mind-set.”⁷¹⁹

Wiederholz states that while the potential remains for the revitalisation of conventional arms control, the current manner and focus of effort has “lost track” of its essential concept, with politicisation having “developed a life of its own” within regime oversight and implementation. He also expressed some frustration over reduced military expertise, lack of coordination, and absence of high-level representation within key bodies. Such reduced involvement, combined with decreasing resources, have led “apathy and ambiguity” throughout the arms control community. Nevertheless, he

⁷¹⁸ Official of the UK MoD Arms Control and Counter Proliferation Policy Department, interview with the author, 25 June 2014.

⁷¹⁹ Lieutenant-Colonel Jörn Wiederholz, interview with the author, OSCE Headquarters, 25 June 2014.

maintains that on-going and emerging security challenges (regional conflicts, terrorism, organised crime, energy security, migration, etc.) will only serve to further demonstrate “regional interdependencies” within the OSCE area and ultimately lead to an improvement in the current state of conventional arms control and CSBMs.⁷²⁰

Dr. Walter Dorn, Canadian Forces College. Dr. Walter Dorn is a Professor of Defence Studies at the Canadian Forces College and Royal Military College of Canada. He acknowledges the logic behind the view that, because the Russians are not abiding by established provisions, major conventional arms control regimes have consequently lost their value. In this respect, he holds President Vladimir Putin largely responsible for what he considers to be a largely “psychological” development. Holding “concentrated power,” Putin has been able to “create the tensions that democracies cannot.” Nevertheless, even as they are, these regimes are still “much better than nothing” and that their abandonment would only result in an accelerated “death spiral.” Accordingly, despite their diminished state, efforts should remain focused on building upon them rather than discarding them.⁷²¹

Dorn stresses the need for a clear and compelling argument to convince Russia that the status quo simply “isn’t good,” noting that Moscow appears willing to “take the hit” in order to secure its annexation of Crimea. Accordingly, alternative means of pressuring Russia need to be explored, rather than just “reacting to punish.” Challenges to Moscow’s actions at the International Court of Justice “might be a good place to start, given the Kremlin’s strong legalistic leanings.”

⁷²⁰ Lieutenant-Colonel Jörn Wiederholz, interview with the author, 25 June 2014.

⁷²¹ Walter Dorn, interview with the author, Canadian Forces College, 9 July 2014.

In seeking courses to rehabilitate conventional arms control, Dorn believes there are some things that can be done to mitigate some of its inherent constraints. For example, he advocates the use of Non-Governmental Organisations in undertaking the role of verification currently undertaken by states, as this renders it “easier to call a spade a spade.” That is, non-national experts and teams are more objective and less impeded by diplomatic pressures and “can say what is needed to be said.” This enables technical “naming and shaming” first, followed by diplomacy afterwards. It also establishes a more valid baseline for assessments. He cited the successful employment of “non-national” verification teams by the UN and the Organisation for the Prohibition of Chemical Weapons as examples.⁷²²

In Dorn’s view, a global Open Skies system would be a “tremendous” achievement. Such a system would also be consistent with his view that the UN should serve not only as a body of discussion and negotiation of arms control mechanisms, but also as the overseer of their implementation. He believes that greater UN governance and execution could “do for arms control what peacekeeping has done for conflict resolution.” Dorn acknowledges that in terms of harmonising effort, “the UN is overburdened right now, so it is good that Europe has the OSCE.” Nevertheless, he emphasises that the UN shouldn’t be excluded from involvement in crucial matters such as the Ukrainian crisis. Moreover, as the OSCE’s role is partly to emphasise policy and create more policy, it would have to be more sanguine in this regard.⁷²³

Dorn believes that developments in recent years have actually rendered conventional arms proliferation issues more important than nuclear ones. He cites the

⁷²² Walter Dorn, interview with the author, 9 July 2014.

⁷²³ Walter Dorn, interview with the author, 9 July 2014.

Georgian conflict in 2008, the current Ukrainian crisis and the overall significant build-up of conventional forces as events that have rendered nuclear arms control's longstanding preeminence over conventional regimes "no longer valid." He further notes that, Iran notwithstanding, the United States "is not in the mood for something else" concerning major changes to its policies and approach to nuclear proliferation security. Simply put, "conventional issues are more immediate and therefore more important."⁷²⁴

With respect to the prospects of recovery, Dorn emphasises the difficulty in changing established mind-sets, for which there is a need "to step back a little" in assessing the increasing complex security situation and developing viable courses of action. For example, with Crimea, "things have gotten worse; not as bad as the low point, but compared with two years ago, developments have not been good." NATO expansion, out of area operations and the "spectre" of its use of force, along with Russia's extensive use of [UN] vetoes and other actions to counteract this, all factor into the "psychology" of the security dynamic, with corresponding effect upon arms control and CSBM.⁷²⁵

Despite the variances in the orientations and personal perspectives of those consulted and interviewed, there were, nevertheless, a number of consistencies in the views expressed. They include:

- conventional arms control mechanisms are necessary;

⁷²⁴ Walter Dorn, interview with the author, 9 July 2014.

⁷²⁵ Walter Dorn, interview with the author, 9 July 2014.

- the fundamental concept of conventional arms control and CSBMs remain essentially valid;
- to varying degrees, the extant regimes are failing due to having become outmoded, undermined or otherwise impaired;
- a general paucity of political will constitutes a predominant underlying factor in regime failure; and
- conventional arms control and CSBM regimes should be suitably modified or replaced by suitable successor mechanisms in order to maintain their conceptual validity and relevance in their respective applications.

Political Will: Enabler and Inhibitor

In the consultations and interviews conducted, weakened political will was frequently cited as the single greatest contributor to the decline of conventional arms control and CSBM regimes. The consistency of this view, in terms of both cause and effect, is noteworthy. It also reflects mainstream thinking on political will as a critical factor in conventional arms control:

Political will remains key to redressing the imbalances and imperfections of the current conventional arms control and CSBMs architecture. ...the ongoing arms build-up and the crisis situation in Ukraine have demonstrated the continued relevance of CSBMs, particularly the Vienna Document 2011, and have also pointed to the need to reinvigorate conventional arms control tools to rebuild cooperative security in Europe. ...While we should study lessons learnt from

such situations, we must remain cognizant of the fact that such measures cannot be effective without the political will of the parties.⁷²⁶

Although frequently regarded as a common underlying deficit, there has been little offered to more specifically expound upon and correlate these attributions within the specific oversight and operation of regime models. That is, whether viewed as a common basis of failure or simply used as a convenient excuse, characterisations have been largely imprecise, equivocal and abstruse. This is somewhat consistent with the portrayal of political will in general:

An oft-cited culprit when government does not take action is a lack of political will. Over a decade ago Hammergren (1998, 12) characterized political will as “the slipperiest concept in the policy lexicon,” calling it “the *sine qua non* of policy success which is never defined except by its absence.” Since Hammergren’s assertion, the term has enjoyed a surge in popularity, with the ambiguity of “political will” making it ideal for achieving political aims and for labeling political failures when the diagnosis is unclear.⁷²⁷

Conceptually ambiguous and intangible, the broad attribution of diminished political will as a catch-all basis for the decline of conventional arms control renders detailed analysis somewhat obfuscated. Moreover, the indirect and displaced manner in which blame is accorded to it renders it exceedingly abstract as a correctable fault. Nevertheless, its effects and outcomes (non-compliance, non-conformity, dissonance, complacency, apathy, neglect, etc.) can be more tangibly perceived and acted upon within a given regime than outside of it. That is, while weakened political will may be

⁷²⁶ Rasa Ostrauskaite and Adam Kobieracki, “Conventional Arms Control in Europe: New Approaches in Challenging Times,” *International Workshop. Conventional Arms Control in Europe: New Approaches in Challenging Times 23-24 April 2015, Berlin, CORE Working Paper 26*, ed. Wolfgang Zellner (Hamburg: Centre for OSCE Research, 2015), 33.

⁷²⁷ Lori Ann Post, Amber N. W. Raile, and Eric D. Raile, “Defining Political Will,” *Politics and Policy*, Volume 38, No. 4 (2010): 654.

ascribed as a root cause of failure, there arguably exists greater means to resist or mitigate it through specific counteractions within the design and operation of governance-management-implementation models themselves.

This underscores an important adjunct of this thesis' central proposition; that is:

- effects attributable to contracted political will have not been sufficiently demarcated and discerned within conventional arms control models; and
- despite their indiscriminate origins, these effects can be functionally counteracted through courses that employ and reinforce the design and operation of regime models, thereby preserving, to the extent possible, conformity and compliance.

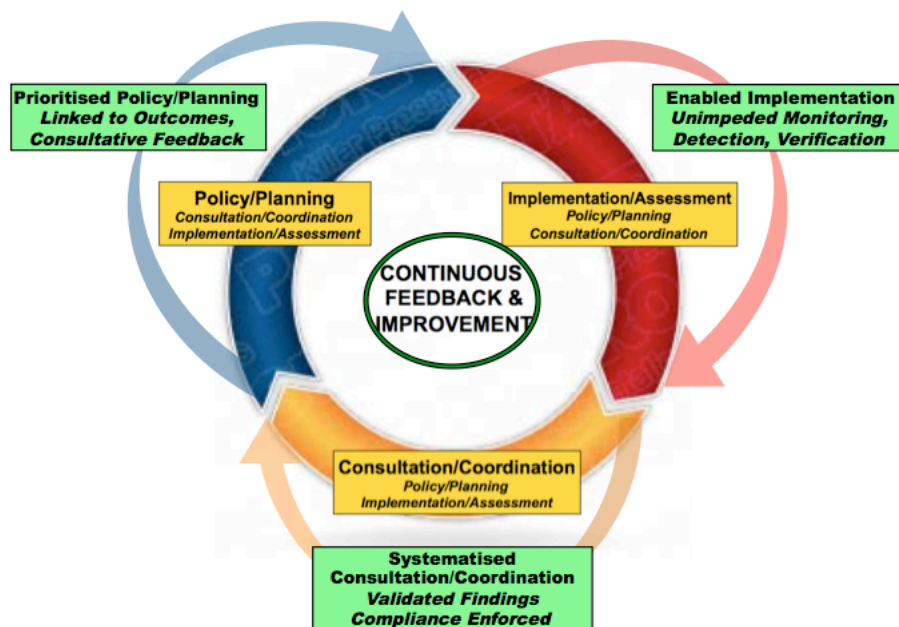


Figure 6.2: Counteractions to Stabilise Governance-Management-Implementation⁷²⁸

A frequent complaint made by many practitioners has been that non-conformity and non-compliance are frequently overlooked or speciously rationalised to be beyond

⁷²⁸ Author's concept.

the scope of a given regime's operating model to rectify. This runs fundamentally contrary to the processes established within the regime's integral operating components, which include the means of monitoring, verification, analysis, evaluation, corrective action, coordination, revision and review. While these processes are not without their limitations and flaws, they do nevertheless provide the fundamental tools with which to address deviations from their established codified norms. They also constitute means of feedback, improvement and refinement. It is therefore essential that, to the extent possible, existing conventional arms control and CSBM models operate *as designed*, in order that valid determinations of disorder can be made, from which the necessary corrections or modifications can be effected. In a report by the International Group on Global Security, Masahiko Asada *et al* noted:

Those treaties that require verification specify methodologies, technologies and procedures for collecting and evaluating information. In other words, they require the use of objective information for verifying compliance with the treaty obligations and, conversely, detecting breaches of these obligations. Decisions about non-compliance based on information collected under a verification regime can be optimized by improving the quality, reliability, analysis and evaluation of that information.⁷²⁹

As compliance- and conformity-weighted security mechanisms, the principal conventional arms control regimes have employed well-established verification provisions and reporting procedures. As repeatedly noted, however, critical faults have developed in the manner in which occurrences of non-compliance and non-conformity have been detected, reported and subsequently addressed within corresponding OSCE oversight bodies. While this can be partly attributed to inherent design limitations, the

⁷²⁹ Masahiko Asada *et al*, "Assessing Compliance with Arms Control Treaties," in *Assessing Compliance with Arms Control Treaties. Report of the International Group on Global Security – IGGS September 2007*, Geneva Centre for Security Policy (Geneva: GCSP, 2007), 33.

fidelity of detection and reporting, subsequent analysis, evaluation and corrective actions have also proven to be particularly deficient. This includes the determination of the specific nature of a given occurrence of non-compliance or non-conformity (e.g., deliberate, inadvertent, unintentional, etc.) in order to determine suitable corrective action:

Actual breaches should lead to enforcement of compliance, while apparent ones should lead to improvements of the verification regime. Each type of apparent breaches leads to different corrective action.... It is important for the verification regime to distinguish between detected breaches that are due to weaknesses of the regime and those attributable to non-compliance.... When discussing options for improving the non-compliance procedures it is thus important not only to look at the individual elements of the treaty but also at the possible feedback loops that connect these elements.... These take account of new developments and incorporate lessons learned in the course of implementation.⁷³⁰

The key components of regime oversight and implementation identified in this study are effectively consistent with the “elements” noted in Asada’s assessment. These components have become increasingly debilitated in their ability to address, manage and resolve matters of non-compliance and non-conformity. As previously noted, this can be attributed to:

- technical non-adherence to existing provisions and procedures (thereby hindering feedback and improvement); and
- inherent deficiencies in provisions and procedures themselves in enabling the resolution of infractions or other deviations, frequently

⁷³⁰ Masahiko Asada *et al*, “Assessing Compliance with Arms Control Treaties,” 34-36.

resulting in the respective OSCE oversight bodies taking an ad-hoc approach or doing nothing at all.

Irrespective of political will, operative counteractions to regime model deficiencies, in both design and execution, would therefore appear to represent a more perceptible initial course through which to induce the behaviours needed to attain greater conformity and compliance.

The OSCE and Russia - Common Denominators in Failure and Recovery

It is important to keep in mind that, while deficient, regimes' extant provisions and procedures can be successfully employed and still provide means of correction and resolution. Indeed, verification protocols in and of themselves have proven useful as means of rectification at the lowest levels, as exemplified by inspectors and escorts resolving technical or procedural faults during verification missions. Moreover, the OSCE has acted to specifically dissuade or even correct non-compliant conduct, as demonstrated by the introduction of "consensus minus" as means of inhibiting major violations and other transgressions.⁷³¹ Nonetheless, the OSCE's *Rules of Procedure* remain decidedly unspecific concerning the specific manner in which instances of non-compliance or non-conformity are to be addressed within the corresponding oversight bodies, other than for them to serve as discussion fora. This lack of procedural specificity has required States Parties or participating States themselves to initiate the necessary consultation and corrective action. In fact, the only OSCE body to which any specific reference is made to matters of non-compliance is the Permanent Council (PC),

⁷³¹ Conference on Security and Cooperation in Europe. *Prague Document on Further Development of CSCE Institutions and Structures* (Prague: Conference on Security and Cooperation, 1992), 16.

which oversees regular political consultations and the overall operations of the Organization. Again, the matter in which non-compliance is addressed is entirely general in nature:

The PC may also convene special PC meetings in order to discuss matters of non-compliance with OSCE commitments and to decide on appropriate courses of action. Special PC meetings may also be convened for other purposes in the periods when regular PC meetings are not normally held or for the consideration of a particular issue/topic. Decisions adopted at reinforced or special meetings shall have the same force as other decisions of the PC.⁷³²

While the OSCE's general consultative and consensus-based design does not preclude the successful resolution of a given infraction or lapse, the absence of more systematised procedures has rendered this increasingly difficult, particularly when cooperative temperament amongst parties is lacking, which is now generally the case. Advancing the arguments made by Masahiko Asada *et al*, the introduction of "default" adjudicative procedures could provide a "forcing function" to ensure that reported contraventions are addressed in a suitably graduated manner, beginning first with the OSCE Secretariat.⁷³³ Employing relatively straightforward criteria, the Secretariat could be suitably empowered to not only "track," but also administer reported infractions or lapses. Matters requiring further adjudication would then be deferred to the corresponding oversight body, as warranted. If unresolved, the matter could then proceed further through a process of escalation to the PC or even the Ministerial Council (MC) -- the OSCE's central decision-making and governing body, comprised of participating States' foreign ministers. This would also enable these matters to be

⁷³² Organisation for Security and Cooperation in Europe, *Rules and Procedures of the Organisation for Security and Cooperation in Europe* (Vienna: Organisation for Security and Cooperation in Europe, 2006), 3.

⁷³³ Masahiko Asada *et al*, "Assessing Compliance with Arms Control Treaties," 39-40.

addressed more promptly and accorded some form of definition or status, rather than merely being left in some undefined form of abeyance, which is currently more often the norm than the exception.

Enhancements to revised consultative and adjudicative procedures would include well-defined parameters concerning rulings and judgements, along with the means of correction and enforcement where culpability is determined. This would also require a decision on consensus being retained by the three implementing bodies or delegated as an executive authority, such as to the chair of each implementing body or vested in the PC. When necessary, the adroit employment of technical and legal resources, including external judicial bodies (such as the International Court of Justice) as a source of legal opinion, would be advantageous to enabling fair and equitable determinations, along with suitable corrective action.⁷³⁴

As frequently noted in this study, the impact of a “non-response” to any deviation or ambiguity, whether inadvertent or deliberate, only serves to inhibit “provocability.” This, in turn, encourages further and more serious contraventions of compliance and conformity, undermining regime functionality and integrity. A more responsive and engaged adjudicative system would therefore encourage States Parties and participating States to more openly and actively report breaches. This includes “self-reporting,” particularly when the opportunity is seen to explain a given action or development (such as a delay in reporting data), before it develops into a more serious issue. In many instances, such infractions are the result of either limited administrative wherewithal or a lack of resources in fulfilling requirements. The OSCE has already

⁷³⁴ Ibid, 41-42.

more than proven itself capable of rendering financial or technical assistance to parties requesting such assistance. Therefore, a more attentive and receptive system would inculcate a greater sense of individual and collective regime coherence, including parties taking on “the responsibility of requesting help, rather than simply assuming that their compliance is not important and non-compliance will go unnoticed.”⁷³⁵ While support for programmed adjudicative procedures would likely vary amongst OSCE participating States, proposals for alternations along these lines would likely receive sufficient backing for more serious consideration, given the generally substandard outcomes realised under the status quo.

The OSCE’s adaptable approach to security has often been touted as one of its major strengths. As such, it is conceivable that the systematic restoration and progressive improvement of its own governance and management system offers a better chance of success than the many ad hoc and external approaches undertaken to resolve individual conventional arms control and CSBM issues. Although the same basic argument of insufficient political will could be made against rehabilitating the OSCE’s own operating dynamic, it is still reasonable to suggest that efforts undertaken from within offer better prospects than outward, unsystematic ones. Similarly, given the increased level of disaccord in international security relations generally, established regimes arguably provide a more assured basis for incremental, transformative change than starting over from scratch. Nevertheless, the OSCE itself faces significant internal and external challenges, regardless of the approach taken.

⁷³⁵ Ibid, 41.

As evidenced throughout this study, the effectiveness and relevance of the OSCE have been tested in a manner that, in many respects, parallel that of conventional arms control and CSBM regimes themselves. As noted in a study undertaken by the autonomous OSCE Network of Think Tanks and Academic Institutions, while some participating States continue to perceive the Organisation positively, they believe that it “does not deliver sufficiently.” Others refer to the OSCE’s “dysfunctional structure and bureaucratization,” “lack of political will among states to increase the OSCE’s role, especially in the field of security” and the “institutional fragmentation or compartmentalization of the OSCE region.”⁷³⁶

An analysis of the OSCE conducted by the Latvian Institute for International Affairs notes that the Organisation is currently “not very high in the security policy agenda” of its membership and that this could ultimately lead to questions about its “relevance and very existence.”⁷³⁷ Furthermore:

...the role of the OSCE as security institution could significantly diminish within the security environment of the 21st century, and one would argue that within increasing global interdependence, transparency, and further development of societies, OSCE should adapt itself to the new challenges or disappear.⁷³⁸

A policy paper prepared by Victor-Yves Ghébal for the Geneva Centre for the Democratic Control of Armed Forces determined: “In a nutshell, the OSCE has been fairly successful in conflict prevention, unsuccessful in conflict resolution and unevenly

⁷³⁶ Organisation for Security and Cooperation in Europe Network, *Threat Perceptions in the OSCE Area* (Vienna: OSCE Network of Think Tanks and Academic Institutions, 2014), 34.

⁷³⁷ Latvian Institute of International Affairs, “The Challenge of OSCE within Global Security Environment of the 21st Century (2013)” *Latvian Institute of International Affairs* [Journal on-line]; available from <http://liia.lv/en/blogs/the-challenges-of-osce-within-global-security-envi/#>; Internet; accessed 22 July 2015, n.p.

⁷³⁸ Latvian Institute of International Affairs, “The Challenge of OSCE within Global Security Environment of the 21st Century (2013),” n.p.

successful in post-conflict rehabilitation.”⁷³⁹ Ghébalı further concluded that three major factors were challenging the OSCE's *raison d'être*; namely, enlargement of the European Union and NATO; increasing functional deficiencies arising from the inability to successfully transition from a conference process to a “standard international organization;” and incompatibilities between the Russian Federation and the OSCE concerning its evolving political and institutional construct.⁷⁴⁰

Specifically, Ghébalı opined that the OSCE's perceived value had diminished in comparison with the European Union and NATO, whose respective guarantees of economic prosperity and hard security could not be matched. Furthermore, a number of the OSCE's “core” functions (including conflict management) have been “increasingly assumed by the more politically relevant, richly-endowed and capable institutional actors.”⁷⁴¹ He also cited the OSCE's self-generated handicaps, resulting from “the *modus operandi* of an outstandingly pragmatic international institution – in particular the absence of an international legal capacity, a consolidated founding instrument and updated basic rules of procedure.”⁷⁴²

Finally, Ghébalı regarded the third factor -- the Russian Federation's participation in the OSCE -- as “an existential question” for the institution. This is due to the critical investment made by the Organisation in the democratic evolution of that country, with the presumption of a “transformation of a Soviet-style State into a member of the modern European family of nations abiding domestically by the rule of

⁷³⁹ Victor-Yves Ghébalı, “The OSCE Between Crisis and Reform: Towards a New Lease on Life,” *Policy Paper No. 10*, (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2005), 7.

⁷⁴⁰ Victor-Yves Ghébalı, “The OSCE Between Crisis and Reform: Towards a New Lease on Life,” 12.

⁷⁴¹ *Ibid*, 12.

⁷⁴² *Ibid*, 12.

law and externally by international law.”⁷⁴³ Contrarily, the OSCE has become seriously tested by Moscow, whose increasingly divergent conduct, general lack of cooperation and waning support are not only undermining the Organisation’s essential functionality, but threatening its very existence.

Indeed, the waning relationship between Russia and the OSCE generally parallels that country’s increasing disregard of its regimes, which is somewhat consistent with Colin S. Gray’s central paradox of arms control. Gray, the Director of the Centre for Strategic Studies at the University of Reading, asserted:

... if arms control is needed in a strategic relationship because the states involved might go to war, it will be impractical for that very reason of need, whereas, if arms control proves to be available, it will be irrelevant.”⁷⁴⁴

In this respect, Russia’s resurgence and subsequent military actions to secure its Near Abroad have served to reduce its concern over the likelihood of traditional forms of major armed conflict. This, in turn, has reduced its sense of imperative to further commit to “traditional” binding arms control regimes. Therefore, notwithstanding its continued use of truculent rhetoric concerning the “threat” posed by NATO and the United States, Moscow’s more recent strategic security documents have suitably incorporated “non-traditional” threats within its own means and on its own terms.

With Russia’s renewed sense of confidence in its military capacities has come a general sense of disillusionment with OSCE’s ability to serve its strategic and regional security interests. A key facet of this disillusionment concerns the Organisation’s

⁷⁴³ Ibid, 12-13.

⁷⁴⁴ Colin. S. Gray, *House of Cards: Why Arms Control Must Fail* (Ithaca: Cornell University Press, 1992), 17.

perceived “failure” to curtail NATO expansion and operations within Russia’s spheres of influence and interest. Christopher J. Morrow and Matthew Mitchell note:

Recent ineffectiveness of the OSCE’s security goals and Putin’s skepticism of Western influence in the organization has threatened the potential distinct advantages of the OSCE.... Consequently, Russia no longer views the OSCE as a counter to NATO, but utilizes it in an instrumental, selective, and limited manner, primarily to legitimize viewpoints, exchange security information, draw attention to concerns, block unfavorable decisions, constrain member states’ actions, and cooperate on important ‘low politics’ challenges.⁷⁴⁵

Even with the “contentious and often obstructionist relationship” that has developed between Moscow and the OSCE, Morrow and Mitchel still stress the Organisation’s traditional advantage in bridging East-West disparities and fostering Russian trust. This is something that has been largely unattainable through other means of dialogue, such as the EU and NATO. Moreover, they emphasise the critical imperative of re-establishing this traditional role in the face of the on-going crisis in Ukraine, noting “Russia’s historical mistrust of NATO and the EU makes the OSCE a viable option to bridge the estranged relationship created by the crisis.”⁷⁴⁶

Accordingly, in spite of the downcast appraisal the OSCE has received, several critics concede that it retains value and that at least in the near-term, its rehabilitation remains within the realm of possibility. For example, the Latvian Institute of International Affairs acknowledges that the OSCE retains “the capacity to address security issues and find common ground for mutually acceptable solutions which a

⁷⁴⁵ Christopher J. Morrow and Matthew Mitchell, “Europe’s Forgotten Security Organization,” *World Policy Blog* (28 May 2014) [journal on-line]; available from <http://www.worldpolicy.org/blog/2014/05/28/europes-forgotten-security-organization>; Internet; accessed 22 June 2015, n.p.

⁷⁴⁶ Christopher J. Morrow and Matthew Mitchell, “Europe’s Forgotten Security Organization,” n.p.

nation-state simply cannot do due to their limited capacity,” and that it could be a “relevant and quite valuable asset to arrange security issues in the future, in case when NATO, EU or other countries and/or organizations are not able to succeed.”⁷⁴⁷

Regarding its particularly tenuous relationship with Moscow, Morrow and Mitchel emphasise the need for the OSCE to focus upon the fundamentals by promoting “its existing, but underutilized cooperative security approach... to advocate conflict prevention, stabilization, and reconstruction....”⁷⁴⁸ They also note some positive indications, such as Washington’s attempt to specifically employ the OSCE as a “forum for dialogue” with Moscow over the Crimea issue. Finally, they emphasise that, despite its “bellicose demeanour,” Moscow still regards the OSCE as having value as an “information provider.”⁷⁴⁹

Even in its currently inhibited state, David J. Galbreath argues that the OSCE retains fundamental value:

... the OSCE has been accused of being nothing more than a “talking box.” If this were the only thing that the OSCE was, it would be problematic, but nevertheless that still would not make the organization irrelevant. The OSCE is the only organization, other than the UN, that consists of North America, Europe and the entire post-Soviet region. While NATO, the EU and the Council of Europe have expanded since the end of the Cold War, they are considerably unlikely to go this far. Thus, with every other regional organization, there remain insiders and outsiders. The OSCE’s inclusiveness makes it a vital

⁷⁴⁷ Latvian Institute of International Affairs, “The Challenge of OSCE within Global Security Environment of the 21st Century (2013),” n.p.

⁷⁴⁸ Ibid, n.p.

⁷⁴⁹ Ibid, n.p.

organization for peace and stability in the Euro-Atlantic Area, even if were only a “talking box.”⁷⁵⁰

Beyond having residual value, Victor-Yves Ghébalı also contends that the OSCE is “perfectly reformable,” with caveats:

It has the capacity for adequate self-reform provided that reforms measures are envisaged from a good faith perspective. This means that reform must aim to improve the efficiency and relevance of the Organisation for the common interest of all its participating states, and not just to advance a specific national or collective agenda: no participating State or group of participating States should be determined to obtain drastic reform measures or oppose fair reform measures at the price of breaking the instrumentality that the OSCE represents. It also entails that reform should not undermine the flexibility and creativity of the Organisation by straitjacketing formats and procedures with a shift from one extreme to other – substituting sheer rigidity for sheer pragmatism. Finally, the objective of defusing divisions among participating States should not be achieved at the expense of downgrading monitoring standards or softening existing commitments.⁷⁵¹

Ghébalı’s assessment generally supports the premise that the rehabilitation of the OSCE includes the preservation of the core precepts of its existing construct and then undertaking the necessary steps to reinforce and improve upon them without compromising integrity. While garnering the collective willingness to achieve this would again appear to constitute the greatest single obstacle, this approach appears more viable than alternative proposals (e.g., calls for replacement security concepts, such as the Russian Pan-European Security Pact) that fall short of attaining the same

⁷⁵⁰ David J. Galbreath, *The Organization for Security and Cooperation in Europe (OSCE)* (Milton Park: Routledge, 2007), 121-122.

⁷⁵¹ Victor-Yves Ghébalı, “The OSCE Between Crisis and Reform: Towards a New Lease on Life,” 20.

degree of interconnected, overarching governance. The rehabilitation of the CFE Treaty, Vienna Document and Open Skies Treaty would, therefore, logically benefit from the institutional stabilisation and reinforcement of the OSCE itself.

Although the current encumbered state of conventional arms control regimes, along with that of their governing institution, may be regarded by some experts as having already surpassed a “point of no return,” others have contended that the situation presents opportunities for recuperation. In 2001, Michael Moodie and Amy Sands questioned whether the slackened rate of progress had actually provided the opportunity to “slow down the arms control process and concentrate on strengthening the existing foundation.”

While many experts may bemoan the slow pace of today’s arms control agenda, perhaps it should be seen as a blessing in disguise. The delay in developing new arms control initiatives and moving ahead on negotiating new agreements provides an opportunity to focus on an already over-crowded arms control agenda and to develop the political will and consensus needed to implement treaties effectively. Given the limited resources available for arms control activities and the uncertain political will to implement effectively what already has been negotiated, increasing the burden on an already overloaded system may cause it to falter if not crash.⁷⁵²

This appraisal further supports the view that if conventional arms control is to be preserved as a fundamental component of Euro-Atlantic and Eurasian security, then action must also be taken within regimes’ existing operating models to correct or otherwise alleviate the most patent faults and ambiguities. This logically begins with

⁷⁵² Michael Moodie and Amy Sands, “New Approaches to Compliance with Arms Control and Nonproliferation Agreements,” *The Nonproliferation Review/Spring 2001*: 8.

the re-establishment of critical planning, consultation and implementation functions, together with their ordered interaction. Such a course would at least enable a basis for less encumbered implementation, improved validation and redress of contraventions, and more coherent policy and planning. By re-establishing essential functionality, this “back to basics” approach would therefore constitute an elementary first step in stabilising these faltering regimes.

Although eliciting the cooperation of States Parties and participating States likely constitutes the single greatest obstacle in arresting the “negative spiral” of conventional arms control and CSBM regimes, it is evident that recent circumstances may have indeed rendered this an attainable initial step. While the broader complexities of the OSCE’s organisational dynamic exceed the scope of this study, it can nevertheless be argued that such conditions are serving to increasingly compel the OSCE’s executive, corresponding implementing bodies and key members to induce greater conformism through fundamental leadership and reinforced personal example. While seemingly discordant within a consensus-based institution, there is little question that more is now required to shape priorities and influence behaviours in a manner that corresponds with regime imperatives. It is evident that such leadership has been lacking for some time, with the institution itself having increasingly defaulted to serving more as a freewheeling platform for security-related dialogue than an actual instrument of security.

Maximilian Stern and David Svarin of the Swiss Forum on Foreign Policy assert: “One of the biggest flaws of the organization is certainly its lack of sustainable

leadership.”⁷⁵³ They argue the need for a permanent chairmanship to replace the current “troika” rotational system, noting that otherwise, “variances in capacities and expertise” necessitate the Chairmanship to be rebuilt again every year.”⁷⁵⁴ Robert Barry, a former OSCE Head of Mission in Bosnia and Herzegovina states that “gaps in leadership” resulting from a weak rotating Chairmanship call for the “bolstering” of the OSCE Secretariat and the office of the “relatively weak” Secretary General.⁷⁵⁵ Other measures, such as the creation of a permanent undersecretary and the professionalization of staff (most of whom are seconded personnel from OSCE member states) have also been advocated.⁷⁵⁶ An OSCE-commissioned report concerning lessons learned from the Ukraine crisis notes: “the lack consensus is also reflected in the weakness of the OSCE as an organization – of which the lack of a legal personality is a particularly damaging example. It is for this reason that the Report underlines the importance of political leadership.”⁷⁵⁷ It too, calls for the strengthening of the Secretary General’s powers.⁷⁵⁸

While there are clearly merits to these recommendations, they, like many other related appraisals, tend to focus more upon the institution’s organisational and operating limitations than the immediate imperative of effective headship within the current

⁷⁵³ Maximilian Stern and David Svarin, “Guest Blog Entry: A Permanent Chairmanship for the OSCE?” *Security and Human Rights*. Netherlands Helsinki Committee (25 June 2014) [journal on-line]; available from http://www.shrblog.org/blog/A_permanent_Chairmanship_for_the_OSCE_.html?id=476; Internet; accessed 15 April 2015, n.p.

⁷⁵⁴ Maximilian Stern and David Svarin, “Guest Blog Entry: A Permanent Chairmanship for the OSCE?” n.p.

⁷⁵⁵ William H. Hill, Robert Barry and P. Terrence Hopmann, “254. Conflict Prevention in Europe: Does the OSCE Have a Future?” *Global Europe Program*. Wilson Centre [journal on-line]; available from <http://www.wilsoncenter.org/publication/254-conflict-prevention-europe-does-the-osce-have-future>; Internet; accessed 15 April 2015, n.p.

⁷⁵⁶ William H. Hill, Robert Barry, and P. Terrence Hopmann, “254. Conflict Prevention in Europe: Does the OSCE Have a Future?” n.p.

⁷⁵⁷ Organisation for Security and Cooperation in Europe, *Lessons Learned for the OSCE From its Engagement in Ukraine. Interim Report and Recommendations of the Panel of Eminent Persons on European Security as a Common Project June 2015* (Vienna: Organisation for Security and Cooperation in Europe: 2015), 5.

⁷⁵⁸ Organisation for Security and Cooperation in Europe, *Lessons Learned for the OSCE From its Engagement in Ukraine*, 9.

system. That is to say, there needs to be due priority accorded to what the OSCE can achieve now, within its existing means. Given what the OSCE has been able to accomplish by way of decisive action in the past, leadership remains not only critical to stabilising the Organisation and its regimes, but is also arguably attainable.

Prospects of Adaptation, Enhancement, Complementation and Succession

If the stabilisation of existing conventional arms control and CSBM regime models can be secured, a restored process of continuous feedback and improvement opens up a variety of prospects. These range from on-going calibration, refinement or amendment, to more pervasive measures, such as complementation or outright replacement. A key underlying question would be whether or not the proven fundamental principles and established doctrine of these regimes can be sufficiently preserved as changes become more dramatic. To illustrate, some experts maintain that in order to suitably alter extant treaties and accords, desired outcomes require a significant deviation or even a complete departure from the originating operating concepts. John E. Peters states that this is to be expected, given that “necessary new measures... influence the *resort to arms* rather than controlling arsenal levels or access to weapons.”⁷⁵⁹ Accordingly, in order to effectively transform conventional arms control within a rapidly changing security environment, Peters advocates a complete reorientation that renders conventional arms control models more readily applicable to crisis management support and as a tool of conflict prevention:

⁷⁵⁹ John E. Peters, “From Arms Control to Controlling the Recourse to Force: Crisis Management in Europe Today,” *National Security Studies Quarterly* (Summer 1998): 62.

... the U.S. and European arms control communities must reorganize themselves and create new tools... so that they can be responsive to the needs of crisis management. Moreover, arms controllers should begin working with regional experts to craft appropriate measures to deal with potential conflict areas....⁷⁶⁰

Peters introduced two key considerations in realigning arms control with crisis management: direct international oversight and recourse. Specifically, he sees one way of re-establishing confidence amongst civil authorities in a “Balkans-type” sub-regional conflict scenario being the supplementation of the basic provisions of mainstream arms control regimes, with external monitors incorporated as an “evaluation provision” to ensure the compliance and conformity of the parties, thereby instilling greater confidence. The added provision of available recourse to an external arbiter would ensure an appropriate means of remedy, should the civil authorities of one or more parties fail to fulfil established provisions.⁷⁶¹ This effectively parallels the concept of the *Agreement on Sub-Regional Arms Control* - Article IV, Annex 1-B of the *General Framework Agreement for Peace in Bosnia and Herzegovina* -- an adaptation of the CFE Treaty applicable to Bosnia and Herzegovina, Croatia, Montenegro, and Serbia, which is overseen by a representative of the OSCE Chairman-in-Office for Article IV.⁷⁶² Peters suggests that additional “safety and security measures” could be developed to complement ‘in-place’ arms control and CSBM. These could include international police monitoring (such as those already established under the Dayton Accords⁷⁶³), international legal services, a purpose-specific appeal process and an independent media monitoring and reporting system. Such measures could serve to

⁷⁶⁰ John E. Peters, “From Arms Control to Controlling the Recourse to Force: Crisis Management in Europe Today,” 62-64.

⁷⁶¹ Ibid, 63.

⁷⁶² Sub-Regional Consultative Commission, *Agreement on Sub-Regional Arms Control Article IV* (Florence: Organisation for Security and Cooperation in Europe, 1996).

⁷⁶³ United Nations, General Assembly and Security Council, *General Framework Agreement for Peace in Bosnia Herzegovina* (Paris: United Nations, 1995).

externally reinforce the governing arms control regime, while still enabling its integral implementation apparatus to function relatively unimpeded.⁷⁶⁴

While the example cited applies to an arms control mechanism oriented towards assuaging a major sub-regional conflict and humanitarian crisis, it is reasonable to hypothesise that, during the course of their implementation, other existing conventional arms control regimes might be similarly sustained or enhanced. That is, complementary or peripheral safety and security measures could serve to mitigate existing and emerging deficiencies, even if temporal in nature.

Another consideration in the formulation of further developed, adapted or successor conventional arms control regimes concerns whether or not they would quantifiably improve underlying deficiencies in core capacities, such as the detection and validation of contraventions and infringements, along with the enforcement of compliance and conformity. As noted by Moodie and Sands:

...the intrinsic detection and reporting of non-compliance through verification arguably should have had greater impetus in terms of exposing and detailing specific contraventions. Thus, developing a more widely accepted international approach to reviewing compliance questions is critical to developing the strong international base needed to address effectively significant compliance problems and to produce responses that yield results.⁷⁶⁵

As part of an overall process of regime development and change, a definitive standard of compliance and clear basis for enforcement action, formally defined,

⁷⁶⁴ John E. Peters, "From Arms Control to Controlling the Recourse to Force: Crisis Management in Europe Today," 62-64.

⁷⁶⁵ Michael Moodie and Amy Sands, "New Approaches to Compliance with Arms Control and Nonproliferation Agreements," 7.

specified and incorporated into regime codification would therefore constitute an important evolution. In addition to establishing a suitable means of recourse within a given regime, effective detection and enforcement would also serve to raise the threshold of other, more extreme forms of reaction, most notably, military escalation. As noted by Harald Müller, regime enforcement would constitute “that set of activities aimed at bringing a reluctant or even resistant party back into compliance when more cooperative attempts at ensuring compliance have failed, and increasing evidence is available that the party is effectively in noncompliance with its obligations.”⁷⁶⁶ These might comprise a programmed sequence of prohibitions or sanctions, further enhanced through the judicious application of the intrinsic early warning and threat characterization already afforded by extant regimes. Such an evolution should also logically take into account the increasingly asymmetric character of conventional weapons proliferation – such as small arms and light weapons -- which could be more effectively counteracted through the broadened harmonization of arms control, CSBMs, counter-proliferation, and conflict prevention efforts across the security spectrum.

Conclusion

This chapter has sought to substantiate the central proposition of this thesis through the detailed appraisal of breakdowns in the governance-management-implementation model of conventional arms control and CSBM. The perspectives gleaned from subject matter experts, preceded by background research and case study examinations, have facilitated this appraisal. Notwithstanding variations in

⁷⁶⁶ Harald Müller, “Compliance Politics: A Critical Analysis of Multinational Arms Control Treaty Enforcement,” 78.

characterisation, it is apparent that in addition to inexorable external influences, the erosion of regime functional integrity -- itself very much the result of critical faults within respective operating models -- constitutes a highly important underlying contributor to the overall decline of conventional arms control and CSBM. Indeed, as noted, increasingly enervated consensus and diminished cooperation have significantly impeded the ability to uniformly attain the codified standards of conduct that have been established.

While varying degrees of disaccord are inherent to any regime, it is evident that, as the governing institution, the OSCE has demonstrated an overall aversion to adequately identifying, correcting or deterring two key manifestations of flagging common will: non-compliance and non-conformity. While the Organisation and its implementing bodies must be held to account, individual parties themselves -- most notably, the Russian Federation -- are equally responsible for purposefully circumventing binding provisions and otherwise undermining regime integrity. Regardless of blame, unchecked contraventions and lapses will continue to degrade and diminish conventional arms control and CSBM regimes, with correspondingly escalated risk. Accordingly, a critical initial step entails the stabilisation of existing models through focused counteraction to deviations from the established standards of conduct. Such counteraction, while notionally attainable, would nevertheless require significant changes in institutional and key constituent mind-sets, along with correspondingly influenced behaviours through example and leadership. The stabilisation of regime models may indeed serve to better enable further alterations or replacements; however, the long-term recovery and sustainment of established principles and concepts remains an open question.

CHAPTER 7 CONCLUSION

General

This study of the concept, model and evolution of conventional arms control and CSBM, together with empirical case study analyses of the CFE Treaty, Vienna Document and Open Skies Treaty, has employed a “practitioner’s perspective” in accounting for the varied factors that have influenced both their progression and degradation. Although elemental breakdowns within the operative constructs of these regimes have been established as a key underlying cause of their ensuing state of disorder, the overarching influences of the broader geostrategic environment remain inexorably linked and must be considered accordingly. Still, the comparatively indistinct nature of these outward influences renders causative factors difficult to delineate and address. For that reason, efforts to directly resolve indicative deficiencies from within regime models arguably constitute a more perceptible approach, in comparison with oblique external strategies.

Over the past several years, the ability to control, restrict or otherwise constrain conventional military forces has become progressively moribund, with “quality” (greater mobility, increased precision, higher yields, etc.) now arguably surpassing “quantity” (munitions, equipment holdings and personnel strength) as the critical military capacity and regulatory benchmark. Moreover, chronic unimpeded transgressions of binding regime provisions may have already rendered certain

conventional proliferation security precepts effectively outmoded, despite their fundamental judiciousness. Nevertheless, the extent of regimes' functional impairment represents, in and of itself, a distinct critical challenge to the prospect of their rehabilitation and the sustainment of conventional arms control in general.

In light of the aforementioned, the principal actors (governing organisation and constituent parties) must be recognised for their individual and collective roles in the degradation of conventional arms control and CSBM. Accordingly, this study has led to a somewhat exacting appraisal of the OSCE in the context of its record of performance, however constrained, in its oversight of the CFE Treaty, Vienna Document and Open Skies Treaty. Individual States Parties and participating States, along with their associated security organisations, have been similarly scrutinised in terms of their corresponding relevance.

It is apparent that impeded oversight and management have limited not only effective implementation, but also the means of enabling conventional arms control and CSBM regimes to keep pace as interconnected, scalable mechanisms within an increasingly multidimensional international security framework. Indeed, some observations suggest that regional and national proliferation issues might have been more effectively addressed through expanded conflict prevention and resolution measures, rather than the customarily imposed limitations and verification of compliance. While these rapidly evolving security challenges may ultimately prove well-suited to the OSCE's "flexible, adaptive approach to security,"⁷⁶⁷ given the current state of disorder, it is unclear whether they can be any further assuaged through the

⁷⁶⁷ Lamberto Zannier, interview with the author, OSCE Headquarters, Vienna, 26 June 2014.

modification of existing regimes or if entirely new methodologies and mechanisms will be required. Regardless, the preservation of the underlying principles of conventional arms control and CSBM, along with the operative functionality of their regimes, will remain key criteria in attaining succeeding standards of compliance and conformity.

Key Takeaways

This study has upheld the contention that while conventional arms control's overall decline can be attributed to a wide-range of contributing factors, breakdowns within the interdependent components of the governance-management-implementation model have also seriously undermined the core integrities of the three principal regimes. Although the initial impact of these faults may have been minor, there is little question as to their subsequent, cumulative effect in impairing the predictability, transparency and stability required to sustain the mutually reinforcing and interlocking character of these regimes. In particular, failures in oversight and implementation have progressively weakened both individual and collective accountabilities, along with the common resolve required for effective governance. Given the unique circumstances leading to the establishment of these regimes, the prospects of their operative rehabilitation and revival do not appear likely unless some form of inducement is applied to "kick-start" current models to start functioning again as originally envisioned.

Significant security relapses within the past decade certainly provide a clear incentive. The Russian Federation's clash with Georgia, annexation of Crimea and on-going proxy campaign in Eastern Ukraine have not only significantly undermined

security and stability generally, but have also clearly demonstrated what the outright abrogation of binding conventional arms control and CSBM commitments can reap. Although Russia can be easily cited as the leading offender, it is clear that various infringements and lapses of the CFE Treaty, Vienna Document and Open Skies Treaty by other States Parties and participating States have also eroded the integrity, efficacy and relevance of these “pillars of security.”

Within a broad array of considerations, the near-collapse of the CFE Treaty perhaps best corroborates the exacerbating effects of the “negative spiral” created by deviations, defections and other events impeding a regime’s governance-management-implementation model. Without question, Russia’s suspension of compliance in 2007 and its abandonment of the JCG in 2015 represent the most blatant outcomes of the Treaty’s failure as an enduring security regime. Although the fundamental framework of the regime remains nominally intact amongst its 29 surviving States Parties, the departure of Russia -- the single largest holder of armaments and equipment subject to the Treaty -- has exhausted much of the regime’s impetus, potency and relevance as an instrument of transparency, predictability and accountability. The resultant “void” has served to exacerbate, if not accelerate, the overall degradation of conventional arms control and CSBM in Europe. Given these outcomes, Anthony H. Cordesman’s “unpleasant truths” and “iron laws” – including the contention that “nations that want to go to war will always be able to do so,” appear particularly valid.⁷⁶⁸

While clearly battered, the CFE Treaty arguably retains some value and is not beyond some measure of stabilisation and rehabilitation. Nevertheless, it remains to be

⁷⁶⁸Anthony H. Cordesman, *Concepts of Arms Control – IV Shaping the Future*, 2.

seen what aspects remain conceptually viable and operationally sustainable at this stage. Following several years of growing dysfunction, many consider the Treaty's fundamental concept of verifiable conventional weapons, equipment and personnel ceilings effectively invalid at this juncture. Others believe it still has utility and as such, should be sustained to the extent possible, rather than being jettisoned altogether. Regardless, the CFE Treaty "experience" will hopefully provide the basis upon which to make the right determinations in enabling a constructive process of alteration or succession.

Although similarly beset by recurrent contraventions, lapses and dysfunctional oversight, the Vienna Document continues to provide a mechanism for confidence-and security-building, verifiable information exchanges, and notification/observation provisions. But even with successive updates, many of the regime's politically binding provisions remain out-dated and unrealistic. Nevertheless, the Vienna Document's inherent character as a CSBM regime renders it an expedient verification and compliance instrument in certain respects. Indeed, despite some disappointing results in Crimea, its voluntary hosting provisions (to dispel concerns about military activities) and over-quota inspections in Ukraine proved to be somewhat useful. The Vienna Document, like the CFE Treaty, has been significantly degraded; however, as indicated in this study, it appears somewhat more amenable to undergoing the necessary adjustments to improve its practical utility and long-term viability.

The Open Skies Treaty has remained the least degraded of the three regimes in terms of its ability to deliver its observation flight mission programme; however, significant issues have undermined its essential premise and reduced its overall high

potential. Foremost of these are the many unresolved compliance and conformity issues that present an immediate and worrisome impediment to implementation. Otherwise, the growing disparities between national observation aircraft and their respective mission systems -- including the difficult technological leap to digital-based technologies -- will continue to present a challenge to the Treaty's underlying concept of affording all States Parties a common capability baseline. Moreover, fundamental disputes between parties, such as that between Greece and Turkey over the accession of Cyprus, run the risk of effectively paralysing the Treaty. These important issues notwithstanding, Open Skies has more than proven its utility, as evidenced by the valuable observation flight missions recently conducted over Ukraine and western Russia in the proximity of conflict areas, including the first use of "extraordinary" observation flight provisions. Regrettably, the shoot-down of a Ukrainian AN-30 Open Skies aircraft (conducting a national reconnaissance mission), followed shortly thereafter by Malaysian Airways Flight MH17, have tragically demonstrated the risk of operations conducted within or near "non-permissive," environments, both real and contrived.

Despite their impairment, conventional arms control and CSBM regimes have nevertheless managed to "limp along" with varying degrees of residual utility. Certainly, their subsistence thus far indicates at least a modicum of continued recognition and support. Accordingly, restored essential functionality could serve to "stem the bleeding" and possibly provide the conditions for more attuned assessment and rehabilitation. Still, there remains a surfeit of unresolved issues that would have to be addressed in order to realise any meaningful progress. From the outset, revitalised dialogue would be required to move beyond various obstructions and impasses. This

includes the moderation of well-entrenched obduracy. As previously indicated, the leadership and initiative of the OSCE and its leading members would be crucial in securing the active participation and support of all concerned. This includes, of course, the pivotal involvement of the Russian Federation, whose divergent security perceptions have been all too frequently translated into a troublesome combination of intransigence and unpredictability. Moscow, which has largely focused its efforts towards maintaining a posture of general contrariness, will have to avail itself to the opportunity of renewed engagement if it is to realistically attain any of the security assurances it has sought from NATO and the West.

From the case study examinations and subsequent analysis, the following overarching determinations and adjunct findings have been rendered:

- Conventional arms control and CSBM regimes are in an overall state of serious decline. This is attributable to a wide variety of contributing factors, of which breakdowns within the operative constructs of the regimes themselves constitute a key underlying aspect;
- While the fundamental concepts of arms control and CSBM have remained essentially valid, they have been progressively weakened by misapplication, dissonance and lack of resolve in suitably adapting to changes in international security. This has been further compounded by fallacious interpretations, complacency and unchecked misconduct, leading to cumulative failures in governance, management and implementation;
- Over time, non-compliance and non-conformity with the binding provisions of established regimes have become increasingly commonplace. This can be attributed, at least in part, to individual and collective self-interests superseding binding obligations and the

perception that, given weak central oversight, contraventions and lapses can occur with little or no consequence;

- From an oversight perspective, the core integrities of established regimes have been compromised as a result of individual and collective failings in upholding established provisions, standards and attendant obligations. While certainly not without fault, the regimes themselves have been too the focus of criticism, rather than the governing institution, implementing bodies and parties themselves;
- The manner in which arms control verification observation, inspection and evaluation provisions have been applied has proven increasingly insufficient as a primary means of inducement, correction and deterrence. This may in part be attributable to complacency derived from early successes, combined with individual and collective reticence in formally reporting offenders and their transgressions, so as to avoid confrontation and preserve goodwill;
- The OSCE and its constituents have largely failed to mitigate the impeded function of the three regimes, as well as hold aberrant States Parties and participating States sufficiently accountable. While this can be attributed, in part, to the Organisation's construct and character as a consensus-based institution, there nevertheless exists fundamental fault in overlooking non-compliance and non-conformity in favour of promoting a sense of harmony and perception of success;
- Excessive tolerance of national laws, regulations and procedures conflicting with and superseding binding provisions has progressively undermined the legally- and politically-binding force of conventional arms control and CSBM regimes. This is, again, indicative of fundamental shortcomings in regime governance, management and implementation, including the constrained ability to effectively assess compliance and enforce uniform standards of conduct;

- Conventional arms control and CSBM regimes were not designed to self-regulate or readily adapt to changes in their corresponding security paradigms. Amending provisions and protocols have proven to be convoluted and inadequate. In addition to inherent technical complexities, this could be further ascribed to undue procedural exigencies and the fundamental difficulty of multinational oversight. Regardless, established mechanisms could have been rendered more scalable to better accommodate changes in major conventional armaments, equipment systems, and corresponding force structures;
- Arms control verification concepts and procedures have been insufficiently accommodated within operational planning processes at various national and international military staff levels, as exemplified by continued incompatibilities and successive revisions, such as those associated with NATO military guidance. This is indicative of a persistent lack of awareness, understanding and support, in favour of established military doctrine;⁷⁶⁹
- With few exceptions, inspection, evaluation and overflight quotas have remained generally disproportionate and uncoordinated between Eastern and Western parties. Although the lack of coordination remains somewhat a function of intended unpredictability and intrusiveness, developments such as NATO expansion have led to even greater disparity. While acknowledged, more suitable quota distribution protocols have remained elusive, given the difficulty in achieving consensus amongst increasingly divergent parties;
- A lack of arms control-related operations and activities jointly conducted by States Parties and participating States from NATO and CSTO -- owing largely to respective security policies and conventions -- has decreased the opportunity for expanded dialogue, coordination and collaboration between principal security groupings. Similarly, despite

⁷⁶⁹ Michael D. Miggins, *Conventional Arms Control and Its Contribution to European Security and Stability*, 26.

established provisions encouraging professional military contacts as a specific CSBM, such interaction has been limited, likely as a result of reduced resources and perceived limited benefit by respective higher authorities;

- Institutional, vice national implementation -- such as composite OSCE inspection and evaluation teams (CFE Treaty, Vienna Document), observation flight crews and common operating platforms (Open Skies Treaty) -- may have served to allay distrust and enable a more balanced, equitable verification and CSBM programme;
- A lack of impetus and resources has delayed the expansion or regional-adaptation of regimes within new geographic regions (e.g. North Africa; North-South Korea, India-Pakistan, China-Taiwan, Ecuador-Peru). This has further inhibited the promulgation of conventional arms control and CSBM concepts, along with the establishment of a broader network of complementary regimes; and
- While the extent of overall degradation varies (with the CFE Treaty clearly being the most impaired), all three regimes are not beyond some measure of remediation. This would likely be best initially undertaken through specific measures to counteract deviations and stabilise existing regime model functionality, from which more valid determinations could then be made regarding subsequent alteration or replacement.

Closing Remarks

It is particularly ironic that conventional arms control, a concept conceived to reduce the threat of conflict, safeguard security and foster confidence, has itself succumbed to significant upheaval and uncertainty. The CFE Treaty, Vienna Document and Open Skies Treaty, once regarded as archetypal, have been undermined to the point

where their current state ranges from general impairment to near-collapse. Although their early implementation significantly reduced the potential for large-scale offensive military operations, subsequent evolutions and events -- most notably, those associated with Russian military resurgence and aggression -- have clearly demonstrated just how quickly the risks to Euro-Atlantic and Eurasian security have increased as these regimes declined.

Although the current geostrategic environment is presently unamenable to major initiatives to salvage conventional arms control and CSBM, pragmatic internal rectifications could serve to re-establish, at least to some extent, the integral functionality of existing regimes. This could, in turn, provide a sufficiently stable footing upon which to undertake measured, incremental courses to sustain, adapt and otherwise evolve them as viable security mechanisms.

APPENDIX A

SYNOPSIS OF THE CONVENTIONAL ARMED FORCES IN EUROPE TREATY

The technical complexity of establishing restrictions on conventional military armaments and equipment for 30 States Parties (including the Russian Federation) within its designated Area of Application is reflected in the 23 Articles and eight Protocols of the CFE Treaty. They are summarised as follows:

Preamble and Articles

- The Preamble, lists the original 22 signatory States, refers to the CFE Mandate of 10 January 1989, outlines the Treaty's objectives, notes the freedom of each State Party in rendering its own decision concerning membership and exhorts all parties to commonly uphold the provisions established.⁷⁷⁰
- Article I summarises the general obligations that each State Party will undertake under the Treaty and lists both its Protocols and Annexes;⁷⁷¹
- Article II provides the definition of terms used throughout the Treaty, its Protocols and Annexes. It also provides for "existing types of Conventional Armaments and Equipment Subject to the Treaty" (CAEST) to be listed in the Protocol on Existing Types and that this list will be periodically updated in accordance with Article XVI and the Protocol on Existing Types;⁷⁷²

⁷⁷⁰ Conference on Security and Cooperation in Europe, *Treaty on Conventional Armed Forces in Europe* (Paris: Conference on Security and Cooperation in Europe, 1990), 1-2.

⁷⁷¹ Conference on Security and Cooperation in Europe, *Treaty on Conventional Armed Forces in Europe*, 2.

⁷⁷² Ibid; 2-6.

- Article III establishes the “counting rules” for armaments and equipment limited by the Treaty, thereby establishing a common standard for implementation and verification;⁷⁷³
- Article IV specifies the rather complicated rules concerning the numerical limits established under the five categories of armaments and equipment limited by the Treaty, including group limitations in each category within established zones;⁷⁷⁴
- Article V outlines special provisions pertaining to the Treaty’s designated “flank zones;” that is, those portions of the AOA located out of the zones specified in Article IV and including the territory of Bulgaria, Greece, Iceland, Norway, Romania, Turkish territory within the area of application, and that part of the former Soviet Union comprising the Military Districts of Leningrad, Odessa, Trans-Caucasus, and North Caucasus. As an added security measure, Article V places specific limits within the flank zones to preclude the concentration on CAEST within them;⁷⁷⁵
- Article VI states the “sufficiency rule,” which limits any one State Party to no more than approximately one-third in each of the five categories of all the CAEST located within the AOA. This is intended to limit any one State Party from holding a disproportional percentage of armaments and equipment as a means of reducing the potential for large-scale surprise attack;⁷⁷⁶
- Article VII concerns the maximum levels for holdings of CAEST and, with Articles IV, V, and VI, comprise the critical operational components of the Treaty. These three Articles set forth the principal numerical limitations of the Treaty on the basis of the two respective “groups of States Parties;”⁷⁷⁷

⁷⁷³ Ibid; 6-7.

⁷⁷⁴ Ibid; 7-9;

⁷⁷⁵ Ibid; 9-10;

⁷⁷⁶ Ibid, 11.

⁷⁷⁷ Ibid, 11-12.

- Article VIII specifies States Parties' legal obligations concerning the Treaty's 40-month reduction period following entry-into-force including the means by which CAEST are to be reduced in order to achieve compliance per Articles IV, V, VI, VII, and XII;⁷⁷⁸
- Article IX provides for the decommissioning of CAEST (as opposed to "reduction," which entails their destruction) as means of facilitating the phased replacement of a given States Party's conventional armed forces within the AOA at or near established ceilings without first having to first destroy existing weapon and equipment systems and degrading capability;⁷⁷⁹
- Article X outlines the provisions concerning designated permanent storage sites. These provisions permit the maintenance of prepositioned stocks of CAEST, which limits those held by active units, thereby lowering the capability to conduct a surprise attack;⁷⁸⁰
- Article XI provides specific provisions concerning armoured vehicle-launched bridges;⁷⁸¹
- Article XII imposes specific provisions, including exemptions and limitations, on armored infantry fighting vehicles held by internal security organizations within the AOA;⁷⁸²
- Article VIII outlines States Parties' obligations for notification and information exchanges required by the Treaty, as specified under the Protocol on Information Exchange and its Annex on Format. Comprehensive in both scope and detail, the notifications and information exchanges are vital to Treaty verification;⁷⁸³
- Article XIV outlines the provisions of verification, including the rights and obligations of State Parties in conducting various types of

⁷⁷⁸ Ibid, 12-14.

⁷⁷⁹ Ibid, 14-15.

⁷⁸⁰ Ibid, 15-17.

⁷⁸¹ Ibid, 17-18.

⁷⁸² Ibid, 18.

⁷⁸³ Ibid, 18.

inspections and evaluations in accordance with the Protocol on Inspection, along with the corresponding (i.e., baseline validation, reduction, residual validation and residual) phases of Treaty implementation. This includes specific provisions concerning “active” (conducted) and “passive” (received) inspections to ensure equitable apportionment of available quotas between the respective “groups of States Parties.” “Passive” inspection quotas are based upon a percentage of a given State Party’s “objects of verification,” whereas “active” inspection quotas are determined by each “group of States Parties” to determine the allocation of inspections for each of its States Parties. To avoid circumventing the inspection regime, “active” inspections conducted by any State Party within its own group is limited to five within each annual Treaty cycle;⁷⁸⁴

- Article XV specifies the means of national or multinational technical means (NTM) of verification that the States Parties can use in support of Treaty verification inspections and evaluations;⁷⁸⁵
- Article XVI establishes the Joint Consultative Group (JCG) as the Treaty’s designated oversight body, responsible for its general implementation, resolution of disputes, and consideration of proposals to improve the viability and effectiveness of the Treaty. The associated Protocol on the JCG provides specific rules and procedures;⁷⁸⁶
- Article XVII concerns communications formats for the transmission of notifications and other information prescribed by the Treaty. It further stipulates the use of both diplomatic channels, with reference made to what would become the OSCE Communications Network;⁷⁸⁷
- Article XVIII provides for follow-on negotiations on military personnel ceilings (CFE IA);⁷⁸⁸

⁷⁸⁴ Ibid, 18-19.

⁷⁸⁵ Ibid, 19-20.

⁷⁸⁶ Ibid, 20-21.

⁷⁸⁷ Ibid, 21.

⁷⁸⁸ Ibid, 21.

- Article XIX concerns the duration and withdrawal provisions of the Treaty. It stipulates that the Treaty is of unlimited duration and may be supplemented by a "further treaty." In addition to the general rights of a State Party under customary international law, this Article includes specific withdrawal provisions pertaining to a State Party's "supreme interests," entailing a 150-day advance notification to the Depositary and all other States Parties and a statement of the "extraordinary events" resulting in that State Party's supreme interests being jeopardised;⁷⁸⁹
- Article XX outlines the provisions concerning the Treaty amendment process, which may be initiated by any State Party;⁷⁹⁰
- Article XXI establishes and specifies the four types of Treaty conferences; i.e., five-year regular review conferences; ad hoc extraordinary conferences; amendment conferences; and withdrawal conferences;⁷⁹¹
- Article XXII specifies the details of Treaty ratification; entry-into-force; the functions of the Depositary; and the Treaty's registration with the United Nations;⁷⁹² and
- Article XXIII provides that all English, French, German, Italian, Russian, and Spanish texts of the original Treaty document are equally authentic and are to be deposited in the archives of the Depositary (i.e., the Netherlands), with certified copies transmitted by the Depositary to all State Parties.⁷⁹³

⁷⁸⁹ Ibid, 21-22.

⁷⁹⁰ Ibid, 22.

⁷⁹¹ Ibid, 22.

⁷⁹² Ibid, 22-23.

⁷⁹³ Ibid, 23.

Protocols

Extensive and highly detailed, the eight Protocols noted in Article III amplify the provisions outlined in the Articles and are fully incorporated and integral to the Treaty. They are:

- The Protocol on Existing Types of Conventional Armaments and Equipment lists all types of CAEST, and those that are specifically limited under it. The Protocol also details the specifications for photographs and technical data that are to be provided for each type CAEST, as well as the procedures for updating the lists and providing notification of such updates;⁷⁹⁴
- The Protocol on Procedures Governing the Reclassification of Specific Models or Versions of Combat-Capable Aircraft into Unarmed Training Aircraft provides for reductions through the reclassification of certain models or versions of combat-capable trainer aircraft into unarmed trainer aircraft, along with associated procedures for accounting for reclassified aircraft in national holdings and attendant notification requirements;⁷⁹⁵
- The Protocol on Procedures Governing the Reduction of Conventional Arms and Equipment Limited by the Treaty, amplifies Article VIII in providing detailed procedures for the reduction of CAEST. It is central to the major objective of attaining compliance with the numerical limitations specified in Articles, IV, V, and VI and includes provisions for approved means of reduction, including various of destruction and conversion;⁷⁹⁶
- The Protocol on Procedures Governing the Categorisation of Combat Helicopters and the Recategorisation of Multi-Purpose Combat

⁷⁹⁴ Ibid, 24-37.

⁷⁹⁵ Ibid, 38-41.

⁷⁹⁶ Ibid, 42-57.

Helicopters amplifies Article VIII of the Treaty. It specifies the manner in which States Parties are to categorize their combat helicopters (i.e., specialized attack, multi-purpose attack, or combat support helicopters) and provides for reduction through the recategorisation of multi-purpose attack helicopters;⁷⁹⁷

- The Protocol on Notification and Exchange of Information Exchange amplifies Article XIII with detailed provisions and procedures concerning both notification exchange of military information requirements;⁷⁹⁸
- The Protocol on Inspection, a critical reference used by all inspectors and escorts, provides highly detailed procedures for the execution of intrusive declared site, challenge, reduction and certification inspections. Further to Articles XIII and XV, this protocol is critical to ensuring the accurate verification of compliance with Treaty provisions;⁷⁹⁹
- The Protocol on the Joint Consultative Group outlines the provisions relating to the establishment, procedures and other provisions concerning the JCG pursuant to Article XVI;⁸⁰⁰ and
- The Protocol on the Provisional Application of Certain Provisions of the Treaty on Conventional Armed Forces in Europe, upon being signed, established the legal rights and obligations of States Parties and put into effect specific provisions largely concerning the operation of the JCG and the exchange of information, pending the Treaty's entry-into-force.⁸⁰¹

⁷⁹⁷ Ibid, 58-60.

⁷⁹⁸ Ibid, 61-83.

⁷⁹⁹ Ibid, 84-114.

⁸⁰⁰ Ibid, 115-116.

⁸⁰¹ Ibid, 117-118.

APPENDIX B

SYNOPSIS OF THE VIENNA DOCUMENT

Designed to build confidence and security through the provision of military data exchanges, visits, weapon and equipment system demonstrations, area inspections and on-site evaluations, the Vienna Document is designed to increase transparency, promote cooperation, reduce misunderstand and suspicion, and restore/reinforce stability during times of international conflict or tension. Its 12 Chapters and five Annexes are summarized as follows:

Chapters

- Chapter I provides for the Annual Exchange of Military Information, which is submitted each December and obliges a detailed account of land and air forces, including: command organisations (down to brigade/regiment level); location; personnel strength (and planned increases); and categorized major conventional weapon and equipment systems (e.g., battle tanks, helicopters, armoured combat vehicles (including armoured personnel carriers, armoured infantry fighting vehicles, heavy armament combat vehicles, certain artillery pieces, and armoured vehicle launched bridges), along with data on new and existing major weapon and equipment systems planned for deployment within the zone of application;⁸⁰²
- Chapter II, Defence Planning, specifies information exchange requirements, including defence policy and doctrine, force planning,

⁸⁰² Organisation for Security and Cooperation in Europe, *Vienna Document 1999 of the Negotiations on Confidence- and Security-Building Measures* (Vienna: Organisation for Security and Cooperation in Europe, 1999), 3-6.

expenditures, budgets and projected spending, procurements, and calendars;⁸⁰³

- Chapter III, Risk Reduction, entails the mechanisms for consultation, verification and cooperation regarding unusual military activities and hazardous incidents of a military nature;⁸⁰⁴
- Chapter IV, Contacts, provides the guidance for visits to air bases and other military facilities in order to directly observe routine air base/facility operations, training and other activities, along with demonstrations of new major weapon and equipment systems. This chapter also outlines optional military contacts activities;⁸⁰⁵
- Chapter V Prior Notification of Certain Military Activities, and Chapter VI, Observation of Certain Military Activities, outline the advance notification thresholds for military activities exceeding 9,000 troops, 250 tanks, 500 ACVs, or 250 pieces of artillery. Observation provisions specify the criteria for participating States to invite observers to military activities involving more than 13,000 troops, 300 tanks, 500 armoured combat vehicles or 250 pieces of artillery.⁸⁰⁶
- Chapter VII, Annual Calendars, specifies the requirement for each participating State to submit its planned military activities that are subject to prior notification for the upcoming calendar year;
- Chapter VIII, Constraining Provisions, establishes additional limits on the number, frequency and troop levels of military activities;⁸⁰⁷

⁸⁰³ Organisation for Security and Cooperation in Europe, *Vienna Document 1999 of the Negotiations on Confidence- and Security-Building Measures*, 7-11.

⁸⁰⁴ Ibid, 12-14.

⁸⁰⁵ Ibid, 15-19.

⁸⁰⁶ Ibid, 20-23, 24-27.

⁸⁰⁷ Ibid, 28-29, 30-31.

- Chapter IX, Compliance and Verification, provides detailed provisions designed to ensure the sustained integrity of the Vienna Document 1999's overarching specifications by permitting specified area inspections to ascertain the non-presence of notifiable military activity; along with formation/unit evaluations to confirm the accuracy of exchanged military information; i.e., the visual confirmation of the data exchanged between Participating States in order to increase transparency:
 - specified area inspections entail the access to and examination of a previously-designated area (excluding sensitive areas/installations as declared by the inspected State), including aerial inspection, by a team of four inspectors, over a 48-hour period, with as little as 36 hours' prior notification. Participating States within the zone of application are obliged to receive three inspections per calendar year;⁸⁰⁸ and
 - formation/unit evaluation visits involve the access by a three-member team over a maximum 12-hour period, in order to allow the other participating States to evaluate the information on military forces provided by the evaluated State. Evaluation visit requests, notified five to seven days in advance, can be refused if the formation/unit is unavailable. Further, access can be refused to "sensitive points, facilities and equipment." Participating States' forces within the zone of application are obliged to accept a quota of one evaluation visit per calendar year for every sixty units, or portion thereof, of forces reported under Chapter I;⁸⁰⁹
- Chapter X, Regional Measures, "encourages" participating States to undertake a broad range of complimentary bilateral and regional arrangements -- on an optional basis -- as a means of complementing and building upon Vienna Document 1999 aims and objectives;⁸¹⁰

⁸⁰⁸ Ibid, 32-36.

⁸⁰⁹ Ibid, 36-41.

⁸¹⁰ Ibid, 42-43.

- Chapter XI, the Annual Implementation Assessment Meeting outlines the modalities of the “AIAM” as a recurring consultative requirement;⁸¹¹ and
- Chapter XII, Final Provisions, entails the use of the OSCE Communications Network, along with attendant publication and reporting requirements in support of the Vienna Document.⁸¹²

Annexes

- Annex I provides the detailed definition of and specifications for the Vienna Document 1999’s zone of application;
- Annex II establishes the detailed, standardised format for reports concerning the Annual Exchange of Military Information, Defence Planning, Annual Calendars and Constraining Provisions;
- Annex III established the detailed information required for the reporting of:
 - Battle tanks;
 - Armoured combat vehicles;
 - Armoured personnel carrier “look-alikes” and armoured infantry fighting vehicle “look-alikes;”
 - Anti-tank guided missile launchers permanently/integrally mounted on armoured vehicles;
 - Self-propelled and towed artillery pieces, mortars and multiple rocket launchers (100 millimetre calibre and above);
 - Armoured vehicle launched bridges;

⁸¹¹ Ibid, 44.

⁸¹² Ibid, 45-46.

- Combat aircraft; and
 - Helicopters;
- Annex IV provides detailed provisions concerning the events as set out in Chapter IV (Contacts) and Chapter VI (Observation of Certain Military Activities); and
- Annex V contains the Chairman's Statement of 28 November 1994, that stipulates that implementation aspects of CSBMs in the “contiguous areas” of the zone of application sharing frontiers with non-European/non-participating States may be discussed at future Annual Implementation Assessment Meetings.

APPENDIX C

SYNOPSIS OF THE TREATY ON OPEN SKIES

Providing for the unimpeded observation overflight of the entire territories of its States Parties, Open Skies Treaty missions have priority over all other flights within a State Party's airspace, with the exception of emergency and flights by heads of state or government. Restrictions can only be imposed concerning the safety of flight, and not for reasons of security. The Treaty comprises 19 Articles and 12 Annexes, which are summarized here.

Preamble

- The Preamble specifies:
 - the aims and objectives of the Treaty,
 - underlying principles, constituents, accession criteria, background, potential contributions to other regions and institutions, and possible extension to other aspects of security, such as the environment;
 - the intent of observing a single State Party or groups of States Parties on the basis of equity and effectiveness, while maintaining flight safety; and
 - the assertion that the Treaty will be undertaken without prejudice to non-States Parties;⁸¹³

⁸¹³ Conference on Security and Cooperation in Europe, *Treaty on Open Skies* (Vienna: Conference on Security and Cooperation in Europe, 1992), 1.1.

Articles

- Article I (General Provisions) states that the Treaty establishes the Open Skies regime and “sets forth” States Parties’ rights and obligations, further noting that all annexes and related appendices constitute integral components;⁸¹⁴
- Article II (Definitions) provides a detailed list of definitions for the purposes of the Treaty;⁸¹⁵
- Article III (Quotas) outlines the provisions for the allocation of both “active” and “passive” overflight quotas, including those for individual States Parties and “Groups of States Parties,”⁸¹⁶
- Article IV (Sensors) outlines the basic requirements for sensors to be employed on observation aircraft. It refers to Annex B, concerning the technical information associated with the categories of stipulated sensors stipulated and Annex D, concerning specific certification provisions;⁸¹⁷
- Article V (Aircraft Designation) specifies the manner through which aircraft are formally designated for observation;⁸¹⁸
- Article VI (Choice of Observation Aircraft, General Provisions for the Conduct of Observation Flights, and Requirements for Mission Planning). In conjunction with Annexes D through H, Article VI provides the principal specifications and outlines the fundamental rights and obligations of States Parties in implementing the Treaty as follows:

⁸¹⁴ Conference on Security and Cooperation in Europe, *Treaty on Open Skies*, 1.1.

⁸¹⁵ *Ibid.*, 2-4.

⁸¹⁶ *Ibid.*, 5-7.

⁸¹⁷ *Ibid.*, 8-10.

⁸¹⁸ *Ibid.*, 10.

- Section I provides for the selection of observation aircraft and specifies the general provisions for the conduct of observation flights;
 - Section II specifies the mission planning and submission requirements for a proposed observation flight, notes the right of the observing State Party to overfly any part of the observed State Party's territory and limits the flight to be no closer than 10 kilometres from the border of any adjacent non-State Party; and
 - Section III, outlines "special provisions" concerning personnel permitted on board observation aircraft; i.e., flight monitors, representatives and interpreters.⁸¹⁹
- Article VII (Transit Flights) outlines the general provisions concerning conduct of transit flights; i.e., the non-observing passage of one State Party's aircraft of over the territory of a third State Party en-route to or from an observed State Party;⁸²⁰
 - Article VIII (Prohibitions, Deviations from Flight Plans and Emergency Situations) specifies the specific circumstances under which observation flights can be prohibited, when a mission flight plan can be modified or otherwise deviated from, and specific actions permitted in emergency situations;⁸²¹
 - Article IX (Sensor Output from Observation Flights) outlines the rights and obligations of States Parties concerning sensor data:
 - Section I establishes the type of recording media to be used, restricts the transmission of data during flight, specifies the handling of recorded media, sets parameters concerning the use

⁸¹⁹ Ibid, 11-17.

⁸²⁰ Ibid, 17.

⁸²¹ Ibid, 17-20.

of data, and encourages States Parties to resolve any technical “incompatibilities” associated with recorded media;

- Section II and III respectively outline the requirements for data processing of optical and non-optical data; and
- Section IV specifies the right of State Parties to acquire copies of observation flight data from a given observing State Party;⁸²²
- Article X (Open Skies Consultative Commission) establishes the OSCC, its responsibilities in overseeing the aims and objectives of the Treaty and provides the general modalities of implementation. Article X is supplemented by Annex L of the Treaty, which provides specific rules and procedures of the OSCC;⁸²³
- Article XI (Notifications and Reports) specifies the requirements and procedures concerning all related notifications and reports;⁸²⁴
- Article XII (Liability) notes the liability of States Parties for the payment of compensation of any damages resulting from the Treaty’s implementation in “accordance with international law and practice;”⁸²⁵
- Article XIII (Designation of Personnel and Privileges and Immunities) provides for the designation of those personnel who will implement the Treaty on the territories of other States Parties and specifies the privileges and immunities they are to be accorded, based primarily upon the 1961 Vienna Convention on Diplomatic Relations;⁸²⁶
- Article XIV (BENELUX) specifies that under the Treaty, Belgium, Luxembourg, and the Netherlands shall be considered a single State

⁸²² Ibid, 20-24.

⁸²³ Ibid, 24-25.

⁸²⁴ Ibid, 25.

⁸²⁵ Ibid, 25.

⁸²⁶ Ibid, 25-26.

Party (Benelux) for the purposes of Articles II to IX and Article XI, along with Annexes A to I and K;⁸²⁷

- Article XV (Duration and Withdrawal) states that the Treaty is of “unlimited duration” and specifies the specific provisions for a State Party’s withdrawal;⁸²⁸
- Article XVI (Amendments and Periodic Review) outlines the amendment procedures for the Treaty, as well as the requirement to review the implementation three years after the Treaty’s entry-into-force and at five-year intervals afterwards. It also provides for a review conference to be convened at any time if requested by no fewer than three States Parties;⁸²⁹
- Article XVII (Depositories, Entry Into Force and Accession) notes the ratification requirements of signatories, the responsibilities of the Depositories (Hungary and Canada), particulars concerning the Treaty’s entry-into-force and the accession of other states;⁸³⁰
- Article XVIII (Provisional Application and Phasing of Implementation of the Treaty) stipulates the provisional application of specific provisions of the Treaty, pending its entry-into-force, along with the phased application of other provisions, as a means of facilitating its overall implementation;⁸³¹ and
- Article XIX (Authentic Texts) affirms the authenticity of the original English, French, German, Italian, Russian and Spanish texts of the Treaty, further noting that they shall be deposited in the archives of the Depositories, with certified copies provided by the Depositories to all States Parties.⁸³²

⁸²⁷ Ibid, 27.

⁸²⁸ Ibid, 27.

⁸²⁹ Ibid, 27-28.

⁸³⁰ Ibid, 28-29.

⁸³¹ Ibid, 29-30.

⁸³² Ibid, 30.

Annexes

Given that the Treaty's detailed annexes and associated appendices are integral and equally legally-binding, they are also noted here:

- Annex A: Quotas and Maximum Flight Distances, which details both active and passive quotas, along with the maximum observation flight distances from designated airfields, calculated from geographic size and border-to-border distances of States Parties;
- Annex B: Information on Sensors, with Appendix: Annotation of Data Collected During an Observation Flight. This annex specifies the technical information for each sensor employed on designated observation aircraft, by type. It also specifies the aircraft and sensor information that must be annotated on mission media;
- Annex C: Information on Observation Aircraft, which specifies the information that must be disclosed by States Parties for each observation aircraft type, including model type, operating parameters, navigation and communications systems, and flight/mission crew configuration;
- Annex D: Certification of Observation Aircraft and Sensors, with Appendix: Methodologies for Verification of the Performance of Sensors Installed on an Observation Aircraft. This annex outlines the highly detailed procedures for the certification of a given State Party's observation aircraft and their sensors;
- Annex E: Procedures for Arrivals and Departures, with Appendix: on Designation of Sites and Points of Entry, Points of Exit, Open Skies Airfields, Entry Fixes, Exit Fixes, Refuelling Airfields, and Calibration Targets. As stated, this annex provides the detailed technical provisions and data for designated entry, exit and operating airfields and sensor

calibration targets, along with procedures concerning the arrival and departure of observation aircraft within a given State Party's territory;

- Annex F: Pre-Flight Inspections and Demonstration Flights outlines the procedures pre-flight inspection of both the observation aircraft and sensors provided by the observing State Party and for the sensors of an observation flight provided by the observed State Party. The annex also outlines the procedures to be followed for demonstration flights, if requested by the observed State Party to observe sensor function;
- Annex G: Flight Monitors, Flight Representatives, and Representatives. This annex specifies the functions and rights of Flight Monitors, who perform specific on-board monitoring functions on behalf of the observed State Party, Flight Representatives, who carry out observation flight duties on behalf of the observing State Party and Representatives, who perform observation flight duties on behalf of the observing State Party, but come from another State Party;
- Annex H: Coordination of Planned Observation Flights. This annex was devised to provide non-obligatory means of de-conflicting observation flights during a given quarter of the Treaty year, particularly those involving States Parties with high passive quotas (e.g., the Russian Federation and Belarus);
- Annex I: Information on Airspace and Flights in Hazardous Airspace requires that each State Party provide regularly updated information on their respective national airspace, to include hazardous airspace, for the awareness of other States Parties in the planning of observation flights. Such information does not preclude observing States Parties from overflying the entire territories of other States Parties, per Article VI;
- Annex J: Montreux Convention. This annex acknowledges Turkey's control over the Bosphorus Straits and the Dardanelles and the Treaty's

conformity with the Convention concerning the routing and notification of transit flights;

- Annex K - Information on Film Processing, Duplicators and Photographic Films, and Procedures for Monitoring the Processing of Photographic Film. This annex outlines the specifications and procedures for film processing and duplication of film media. It also provides for the provision of film, chemical samples, and processing procedures to observed States Parties, along with their specified right to directly observe processing and duplication; and
- Annex L - Open Skies Consultative Commission. This annex provides the general provisions of the OSCC, its annual review of active quotas, provisions for “extraordinary observation flights” (i.e., observation flight requirements arising from unforeseen circumstances) and additional applications of the Treaty, such as environmental monitoring.⁸³³

⁸³³ Ibid, 31-97.

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